THE FINANCIAL SERVICES COMMISSION OF ONTARIO

PENSION BULLETIN

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The Financial Services Commission of Ontario Act, 1997, the Pension Benefits Act, R.S.O. 1990, c.P.8, Regulation 909 R..R.O. 1990 as amended, the terms of the pension plan and trust, if any, and the policies, procedures and practices of FSCO should be considered in determining specific legal requirements, and professional advice should be sought.

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General Announcements

The *Pension Benefits Statute Law Amendment Act, 1999* and Consequential Regulatory Amendments

Bill 27, the *Pension Benefits Statute Law Amendment Act, 1999*, was introduced in the Legislature on December 7, 1999, and received Royal Assent on December 22, 1999. On March 3, 2000, the harmonization and streamlining amendments contained in Bill 27 and related Ontario Regulation 144/00 came into effect.

One important harmonization change is Ontario's adoption, by reference, of the federal investment rules as they read on December 31, 1999. All but two jurisdictions in Canada now have substantially the same investment rules for registered pension plans.

Another harmonization amendment enables Ontario to enter into a multilateral agreement with other jurisdictions regarding multi-jurisdictional pension plans. Benefit settlement deadlines on plan wind-up have also been amended to conform with a harmonization initiative of the Canadian Association of Pension Supervisory Authorities (CAPSA). Under this CAPSA proposal, a pension plan administrator would have 60 days to explain benefit entitlements and options to a terminating member, the member would have 90 days to make any elections, and the administrator would then have 60 days to settle the member's entitlement in accordance with the member's election.

A number of streamlining amendments are also contained in the package:

- cost certificates are no longer required for defined contribution plans;
- voluntary past service buy-backs are now specifically exempted from the minimum 50% employer cost rule; and
- spousal or same-sex partner waivers for pre-retirement death benefits no longer have to be signed by the plan member.

Other amendments include:

- a new LIF Schedule;
- the introduction of an Ontario LRIF, which provides for more flexible withdrawal options and the carry-forward of unused withdrawal room; and
- new reporting requirements for plan administrators and pension fund trustees intended to prevent unremitted pension contributions.

Ontario Regulation 242/00 became effective on May 1, 2000, and financial hardship unlocking is now available to qualified owners of Ontario locked-in accounts. Applications to unlock money held in a locked-in retirement account (LIRA), a life income fund (LIF) or a locked-in retirement income fund (LRIF) may be made in situations where:

- the applicant meets specified low income criteria;
- the applicant faces the risk of eviction from their principal residence;
- the applicant faces the risk of eviction from their rented residence;
- the applicant requires funds to pay first and last months' rent to rent a residence;
- the applicant needs money to pay for

medical treatment for himself or herself, his or her spouse or same sex partner or dependents of either;

- the applicant requires funds to modify his or her principal residence, or the residence of a dependent, to accommodate the use of a wheelchair or other needs related to a disability or illness.

Applications to unlock funds in cases of financial hardship must be made to the Superintendent of Financial Services.

There are also three other types of unlocking applications that may be made directly to the financial institution that administers the locked-in account. These have been available since March 3, 2000, and include:

- unlocking in cases where locked-in amounts are less than a specified amount and the applicant is at least 55;
- unlocking in cases where the applicant's life expectancy is less than two years; and
- unlocking amounts that exceed the maximum transfer amounts permitted under the *Income Tax Act* (Canada).

Copies of Bill 27, Ontario Regulation 144/00 and Ontario Regulation 242/00 are available on FSCO's website at *www.fsco.gov.on.ca* (click on "Pensions" and "Access to Locked-in Accounts"). Prescribed forms are also available on the website.

FSCO staff are committed to working with pension stakeholders to ensure the amendments are implemented successfully. Questions about particular plans should be addressed to the appropriate pension officer; general questions may be addressed to the Pension Policy Unit.

Recent Amendments to Ontario's Pension Investment Regulations and Changes to FSCO Procedures

Changes to Investment Regulations

Ontario Regulation 144/00, which came into effect on March 3, 2000, may have significant implications for pension plans registered in Ontario.

Effective January 1, 2001, pension plans registered in Ontario must comply with the federal investment regulations (sections 6, 7, 7.1, and 7.2 and Schedule III of the Pension Benefits Standards Regulations, 1985), as they read on December 31, 1999. This will require the completion and adoption of a Statement of Policies and Procedures (SIP&P) to replace the current Statement of Investment Policies and Goals (SIP&G), as well as compliance with the other federal investment regulations.

During the period March 3, 2000, to December 31, 2000, pension plans may establish their SIP&P, the content of which must be in accordance with federal investment regulations. Other federal investment regulations relating to SIP&Ps, such as to whom they are to be submitted, would immediately apply. Alternatively, pension plans may continue to comply with the Ontario investment regulations (sections 66 to 75 and 77 to 82 of Regulation 909 prior to the introduction of Ontario Regulation 144/00) with respect to the content and other requirements of a SIP&G. Regardless of whether a SIP&P is established or a SIP&G remains in effect during this period, the pension plan may either invest in accordance with the federal investment regulations or may continue to invest in accordance with the Ontario investment regulations.

Please note that the care, diligence and skill (i.e. prudence) requirements of section 22 of the *Pension Benefits Act* have not been amended. Also note that section 76 of Regulation 909 regarding financial statement requirements has also not changed.

Plan administrators should be aware that a SIP&P and a SIP&G are not identical. For guidance in the preparation of a SIP&P, plan administrators may wish to refer to the document entitled "Guideline for the Development of Investment Policies and Procedures for Federally Regulated Pension Plans" prepared by the Office of the Superintendent of Financial Institutions which is available on their website at *www.osfi-bsif.gc.ca*

Please note that the SIP&P is not required to be filed with FSCO. Although a review of the SIP&P is still required at least once a year, amendments to the SIP&P are also not required to be filed. The SIP&P and amendments must, however, be submitted to the pension plan's advisory committee, if one exists, and to the plan's actuary, if the plan is a defined benefit plan. The administrator must also make the SIP&P available for inspection by the persons listed in section 29 of the *Pension Benefits Act*.

These and other investment regulation changes are significant. It is therefore recommended that pension plan administrators:

- review the implications of the federal investment regulations for their plan,
- prepare and establish the plan's SIP&P as required, and
- plan for the transition to and the implementation of the federal investment regulations.

Changes to FSCO Procedures

With the adoption of the federal investment regulations, two changes are being made to FSCO's procedures:

- effective immediately, the Investment Policy Return, which was required to be completed with the filing of all new SIP&Gs, will no longer be required, and
- the Pooled Fund Central Registry will be terminated effective January 1, 2001. Plans should not make reference to the Pooled Fund Central Registry in their SIP&P.

Introduction of Risk-Based Approach to Supervising the Funding of Pension Plans

The Financial Services Commission of Ontario (FSCO) is introducing a risk-based approach to supervise the funding of pension plans. This new system was developed in consultation with an Advisory Panel drawn from the pension sector. The risk-based approach will enable FSCO to more efficiently utilize its resources, focus its attention on pension plans that require closer supervision, and take corrective action in a timely manner.

This approach is another step towards improving FSCO's operational effectiveness and service, one of its five strategic priorities for fiscal year 2000–2001. This improvement in FSCO's pension regulatory processes will protect pension plan members and their beneficiaries more effectively, and improve the viability of pension plans.

Pension stakeholders were first informed of the risk-assessment project in April 1999, when FSCO released a consultation paper which proposed a system that would use a set of risk-assessment criteria to identify pension plans requiring closer supervision, and described a project protocol for testing those criteria.

Testing of the risk assessment criteria began in June 1999 and was completed in April 2000. Evaluation by FSCO's staff of the risk assessment criteria was presented in May 2000, in a paper titled *Risk-based Supervision of the Funding of Ongoing Defined Benefit Pension Plans.*

To support the new risk-based approach, new regulatory tools are being utilized. For example, since July 1, 2000, a new Actuarial Information Summary (AIS) form developed in conjunction with the Canada Customs and Revenue Agency (CCRA) and the Office of the Superintendent of Financial Institutions (OSFI), has been required for reporting the financial condition of defined benefit pension plans. The AIS form facilitates the capture of essential information from actuarial valuation reports.

For more information about the risk-based approach, please contact George Ma, Chief Actuary, Pension Plans Branch, at (416) 226-7785, or toll-free at 1 800 668-0128, extension 7785, or by E-mail *gma@fsco.gov.on.ca*

Pension Plans Branch – staff changes

Calvin Andrews, Gulnar Chandani, Tim Thomson and Kent Wootton have joined the Pension Plans Branch as Pension Officers. Their telephone numbers are set out in the Allocation Listing which forms part of this bulletin. Hae-Jin Kim has joined the Branch as an Assistant Pension Officer and Chantal Laurin is the Designated Bilingual Assistant Pension Officer.

David Allan has changed portfolios, assuming the alpha range Net-Pep. Lynda Ellis has temporarily assumed responsibility for alpha range En-Gkn and alpha range Kinh-Mark. Pension Officers Sharon Polischuk and Gwen Gignac have left FSCO. Please see reverse side of this page for plan contacts.

Contacts for Plan Specific Enquiries

Pension Plan Allocations

Name	Title	Telephone #	Allocation Alpha Range
Jaan Pringi	Senior Pension Officer	226-7826	
Gulnar Chandani	Pension Officer	226-7770	#'s-Asc
Penny McIlraith	Pension Officer	226-7822	Asd-Bt
Tim Thomson	Pension Officer	226-7829	Bu-Cd
Irene Mook-Sang	Pension Officer	226-7824	Ce-Cz
Lynda Ellis	Senior Pension Officer	226-7809	
Vacant	Pension Officer	See Note 1	En-Gkn
Calvin Andrews	Pension Officer	226-7768	Gko-H
Stanley Chan	Pension Officer	226-7806	I-King
Vacant	Pension Officer	See Note 1	Kinh-Mark
Gino Marandola	Senior Pension Officer	226-7820	
Jeff Chuchman	Pension Officer	226-7807	D-Em
John Graham	Pension Officer	226-7774	Marl-Nes
David Allan	Pension Officer	226-7803	Net-Pep
Larry Martello	Pension Officer	226-7821	Peq-Rob
Rosemin Jiwa-Jutha	Senior Pension Officer	226-7816	
Todd Hellstrom	Pension Officer	226-7814	Roc-Sons
Kent Wootton	Pension Officer	226-7812	Sont-The Drop
Kathy Carmosino	Pension Officer	226-7823	The Droq-Unicorp
Clifford Amilcar	Pension Officer	226-7804	Unicorq-Z

Note 1: Please contact the Senior Pension Officer of this team for information on plans that fall under this Allocation.

Advisory committees –
as at September 1, 2000

FSCO Pension Investment Advisory Committee

Alfred G. Wirth, Chair
Wirth Associates Inc.

Robert Bertram,
Ontario Teachers' Pension Board

Jim Franks,
Frank Russell Canada Ltd.

Bruce J. Grantier,
Scotia Bank

Elaine Hamilton,
United Church of Canada

Claire O. Kyle,
TD Asset Management Inc.

Josephine Marks,
Sun Life of Canada

Ann Marshall,
James P. Marshall Inc.

Barry McInerney,
William M. Mercer Limited

Eileen Mercier,
Workplace Safety and Insurance Board

Thomas E. Phelps,
Noranda Inc.

Robert R. Rafos,
Newcastle Capital Management Inc.

FSCO Pension Actuarial Advisory Committee

Allan H. Shapira, Chair
Hewitt Associates

Art Bicknell,
Sun Life Assurance Company of Canada

Paul Chang,
Morneau Sobeco Inc.

Karen Figueiredo,
Towers Perrin

Patrick F. Flanagan,
Eckler Partners Limited

Laurie Hutchinson,
Hospitals of Ontario Pension Plan

Kem Majid,
Watson Wyatt Canada

Clare Pitcher,
Buck Consultants

Markus Robertson,
Robertson, Eadie, Olsen & Associates

Rob Rosenblat,
Aon Consulting Inc.

David Short,
Eckler Partners Limited

FSCO Pension Accounting and Assurance Advisory Committee

(Chair vacant)

Jason Besler,
Arthur Andersen

Charlie Eigl,
OPSEU Pension Trust

Marie Holland,
KPMG LLP

Ron Koehli,
Institute of Chartered Accountants of Ontario

Massimo Marinelli,
Ernst & Young

Eric Turner,
The Canadian Institute of
Chartered Accountants

Albert Walker,
Global Benefit Plan Consultants

FSCO Pension Legal Advisory Committee

Murray Gold, Chair
Koskie & Minsky

Leigh Ann Bastien,
William M. Mercer Limited

Dona Campbell,
Sack Goldblatt Mitchell

Jeremy Forgie,
Blake Cassels & Graydon

Bernard A. Hanson,
Cavalluzzo Hayes Shilton McIntyre & Cornish

Priscilla H. Healy,
Towers Perrin

Andrew Lokan,
Gowling, Strathy & Henderson

Rose Mark,
State Street Trust Company Canada

Gary F. Nachshen,
Stikeman, Elliott

Mary M. Picard,
Fraser Milner

Douglas Rienzo,
Osler, Hoskin & Harcourt

Hearings/Court Matters

Hearing before Pension Commission of Ontario under *Pension Benefits Act*

Boeing, Toronto Ltd. (formerly McDonnell Douglas Canada Ltd.)

On March 14, 2000, the Divisional Court dismissed an appeal by Boeing with respect to the decisions of the Pension Commission of Ontario dated May 29, 1998 and June 19, 1999. The first decision found that the Pension Commission had jurisdiction to conduct a section 89 hearing under the *Pension Benefits Act* (PBA) in circumstances where the Superintendent refused to order a plan partially wound up. The second decision found that a partial wind-up should be ordered based on either a reorganization of the employer's business or a discontinuance of all or part of the employer's business at a specific location. The court affirmed both decisions. The court also dismissed Gary Maynard's cross-appeal, and agreed with the Commission that the Commission had no jurisdiction to award costs. Gary Maynard was awarded $7,500 for his costs of the appeal.

Regulatory Policies

SECTION:	Refund of Employer Overpayment
INDEX NO.:	R350-102
TITLE:	Application for Refund of Employer Overpayment – PBA ss. 78(1) and (4), as amended
APPROVED BY:	Superintendent of Financial Services
PUBLISHED:	FSCO Pension Bulletin 9/2 and FSCO website
EFFECTIVE DATE:	January 1, 2001
REPLACES:	R350-101

This policy replaces R350-101 ("Refund of Employer Overpayment, Application under subsection 78(4), PBA, 1990") as of the effective date of this policy.

Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28, as amended ("FSCO Act"), Pension Benefits Act, R.S.O. 1990, c. P.8, as amended ("PBA") or Regulation 909, R.R.O. 1990, as amended ("Regulation"), the FSCO Act, PBA or Regulation govern.

General Principles

1. Subsection 78(4) of the PBA provides that:

   Subject to section 89 (hearing and appeal), the Superintendent may consent to payment out of a pension fund to an employer of an amount not in excess of the amount of an overpayment by the employer into the pension fund or of an amount paid by the employer that should have been paid out of the pension fund, but shall not consent unless the application is made in the same fiscal year of the pension fund as the fiscal year in which the overpayment or the payment occurred.

2. There are certain situations in which an employer may be considered to have over-contributed to a pension fund for the purposes of subsection 78(4) of the PBA, including but not limited to situations where:

   (a) the employer has contributed on the basis of an actuarial report for which the effective date had passed but when the new report was filed, such contributions exceeded those required by the new report;

   (b) payments have been made directly by the employer and they should have been made from the pension fund; or

   (c) employer contributions were paid into the pension fund of the wrong pension plan as a result of an administrative error.

   In such circumstances, the employer may be considered to have over-contributed notwithstanding that there may be a solvency deficiency or going concern unfunded actuarial liability in the pension plan.

3. This policy does not apply to refunds

arising from provisions of the *Income Tax Act* (Canada) respecting the refund of contributions to the employer to avoid revocation of registration by the Canada Customs and Revenue Agency (formerly Revenue Canada). Refunds for this purpose must comply with the requirements of subsections 47(15) and (16) of the Regulation, as applicable. Applicants should refer to policy A400-500 ("Reduction of Accrued Benefits and/or Refunds or Payments to Avoid Revocation by Revenue Canada of Registration of a Pension Plan – Exemptions under PBA, R.S.O. 1990, ss. 18(1), s. 26 and s. 47 of O. Reg. 909").

The Application for Refund of Employer Overpayment

4. The format and content of the application should be consistent with Schedule I to this policy.
5. The onus is on the applicant to satisfy the Superintendent that the application complies with the PBA and Regulation. The applicant should also demonstrate compliance with the applicable policies published by FSCO.

Filing the Application

6. (a) The general procedure is outlined in policy S850-200 ("Filing Applications with the Superintendent of Financial Services").
   (b) The application, including attachments, should be submitted on 8-1/2" x 11" paper (subject to legibility).
7. The application is filed with the Superintendent by sending **three (3)** copies to:

   Superintendent of Financial Services
   Financial Services Commission of Ontario
   5160 Yonge Street, 17th Floor
   Box 85
   North York, ON M2N 6L9

8. **Three (3)** copies of any information or materials which are supplemental to the initial filing and which are required in order to complete the application should be filed with the Superintendent.
9. Upon receipt, the application will be acknowledged.

Extension of Procedural Time Limit on Reasonable Grounds

10. Where the Superintendent is satisfied that there are reasonable grounds for an extension of the time limit under subsection 78(4) of the PBA, an extension may be permitted in accordance with section 105 of the PBA.

Decision or Proposed Decision of the Superintendent

11. The Superintendent will make a decision about the application after the Superintendent receives either:
    (a) a complete application; or
    (b) a written request from the applicant asking that the application proceed as is, where the applicant has been advised by FSCO staff that the application is incomplete.
12. Following a review of the application, the Superintendent will make a decision and will issue either a notice of proposal consenting to the application or a notice of proposal refusing consent.
13. The Superintendent will serve the notice of proposal on the applicant as required by subsection 89(3.2) of the PBA. The subsection provides that the Superintendent may require the applicant to transmit a copy of the notice of proposal to such other persons or classes of persons or both as the Superintendent specifies in the notice to the applicant.

14. Where the Superintendent requires that the applicant transmit a copy of the notice of proposal to other persons or classes of persons, the applicant must advise the Superintendent as to the last date on which the applicant transmitted the Superintendent's notice.
15. A notice of proposal issued under subsection 89(3.2) of the PBA shall state that the person on whom the notice is served is entitled to a hearing by the Financial Services Tribunal ("Tribunal") if the person delivers to the Tribunal, within thirty (30) days after service of the notice of proposal, a written notice requiring a hearing.
16. If no notice requiring a hearing is received within the specified time period, the Superintendent may carry out the proposed decision.
17. Applicants should refer to policy S850-100 ("Delegation of the Superintendent's Authorities") and policy S850-200 ("Filing Applications with the Superintendent of Financial Services") for additional information on the decision-making process.

Schedule I

Format and Content of the Application to the Superintendent for Consent to a Refund of Employer Overpayment

Date: *Enter the date of the application.*

Employer: *Provide the full legal name of the employer making the application.*

Pension Plan: *Provide the full legal name of the pension plan and the registration number.*

Applicant: *Provide the name, title and business address of the person making the application. This could be the employer or an agent or representative of the employer authorized to make the application on the employer's behalf. (Unless otherwise indicated in the application, all communication from the Superintendent and staff of FSCO will be directed to the agent or representative of the employer who makes the application on the employer's behalf.)*

Nature of the Application:

Provide a full description of what is being asked of the Superintendent with reference to specific section(s) of the PBA and Regulation pursuant to which the application is being made. For example:

Application for the Superintendent's consent pursuant to subsection 78(4) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended, to a payment of $ *(insert the amount as at the effective date of the refund)* representing an overpayment by the employer into the pension fund *(or* "an amount paid by the employer that should have been paid out of the pension fund"*)* as at *(insert the effective date(s) of the overpayment(s))*, plus investment earnings thereon to the date of payment.

Background:

Provide a summary of how the overpayment occurred and any other information which will assist in understanding the application.

Subsection 78(4) of the PBA – Conditions:

In the following subsections, the applicant must satisfy the Superintendent that the conditions of subsection 78(4) of the PBA have been satisfied.

(a) Amount and Proof of Payment:

Indicate what documentary evidence of the overpayment, including amount(s) and date(s), has been provided in support of the application. This evidence could be in the form of:

- *excerpts from the actuarial report(s) which support the applicant's position that an overpayment has been made (if applicable);*
- *a letter or statement from the fund custodian indicating the employer payments were actually remitted to the fund;*
- *evidence that the employer has made payments from its general revenues which should have been paid from the pension fund; or*
- *evidence that the employer contributions were remitted to the wrong pension plan as a result of an administrative error.*

(b) Timing of the Application:

Indicate how the requirement that the application be made in the same fiscal year as the overpayment occurred has been satisfied, or why an extension of the time limit under subsection 78 (4) of the PBA should be permitted pursuant to section 105 of the PBA.

Plan Provisions:

Provide confirmation that the plan permits, or does not prohibit, refunds of employer overpayments.

Certification by the Plan Administrator:

The application must include as an attachment a completed certification in the form set out in Schedule II to this policy signed by the plan administrator or an agent or representative of the administrator. Indicate where in the application the certification may be found.

Signature by the Applicant:

The application must be signed by the applicant identified at the beginning of the application. Before the signature, the applicant must state that the application contains all the documents and information material to an application made in accordance with subsection 78(4) of the PBA, and that the information contained in the application is true and accurate.

Attachments:

Provide an index of all attachments to the application. The attachments should be listed in an order that corresponds to the order of the subject matter under this document and, where applicable, in chronological order. Where an application is bound, the relevant tab numbers and their contents should also be included in the index.

Schedule II

Administrator's Certification Respecting the Employer's Application under Subsection 78(4) of the *Pension Benefits Act*

Re: PENSION PLAN: _____
(insert full plan name and registration number)

(the "Pension Plan")

EMPLOYER: _____
(insert full legal name of employer)

(the "Employer")

I AM: *(please mark the appropriate box with an "X")*

- ☐ the administrator of the Pension Plan (the "Administrator"), or
- ☐ an agent or representative of the Administrator authorized by the Administrator to provide this certification.

AS PART OF the Employer's application for the Superintendent's consent pursuant to subsection 78(4) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "PBA") for a payment of $ *(insert the amount as at the effective date of the refund, as set out in the Employer's application)* out of the pension fund of the Pension Plan, **I CERTIFY THAT** this payment represents: *(please mark the appropriate box below with an "X")*

- ☐ an overpayment by the Employer into the pension fund of the Pension Plan in accordance with subsection 78(4) of the PBA, or
- ☐ an amount paid by the Employer which should have been paid out of the pension fund of the Pension Plan in accordance with subsection 78(4) of the PBA.

as at *(insert the effective date(s) of the overpayment(s), as set out in the Employer's application)* plus investment earnings thereon to the date of payment.

DATED this _____ day of _____, _____.
(day) *(month)* *(year)*

_____
Signature of Administrator or Administrator's Agent or Representative

_____
Name of Administrator or Administrator's Agent or Representative (printed)

_____

_____

_____
Address of Administrator or Administrator's Agent or Representative (printed)

It is an offence under the Criminal Code, R.S.C. 1985, c. C-46, as amended, for anyone to knowingly make a false document with the intent that it be acted on as genuine.

SECTION:	Refund of Contributions to Plan Members
INDEX NO.:	R400-101
TITLE:	Application for Refund of Contributions to Plan Members or Former Members – PBA ss. 63(7) and (8), as amended
APPROVED BY:	Superintendent of Financial Services
PUBLISHED:	FSCO Pension Bulletin 9/2 and FSCO website
EFFECTIVE DATE:	January 1, 2001
REPLACES:	R400-100, R400-107, R400-200

This policy replaces R400-100 ("Applications to the Commission for Consent to a Refund, PBA, 1987 ss. 64(7) and (8)"), R400-107 ("Locking-In Provisions – Prior Consent of the Commission Required for Refunds, PBA 1990 ss. 63(7) and (8)) and R400-200 ("Applications to the Commission – Funding Deficiency – PBA, 1987 ss. 64(7)") as of the effective date of this policy.

Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 *("FSCO Act"), Pension Benefits Act, R.S.O. 1990, c. P.8 ("PBA") or Regulation 909, R.R.O. 1990 ("Regulation"), the FSCO Act, PBA or Regulation govern.*

General Principles

1. As a general rule, subsection 63(1) of the PBA provides that members and former members are not entitled to a refund of contributions from the pension fund. Subsections 63(2) to (8) of the PBA set out a number of exceptions to this general rule.
2. In particular, subsections 63(7) and (8) of the PBA provide:

> 63. - (7) *Despite subsection (1), on application by the administrator of a pension plan, contributions may be refunded to a member or a former member with the consent of the Superintendent.*
>
> (8) *On application by the administrator of a pension plan, the Superintendent may consent to a refund under subsection (7) if the pension plan provides or has been amended to provide for the refund and the employer has assumed responsibility for funding all pension benefits associated with the contributions.*

3. In addition to satisfying the requirements of subsection 63(8) of the PBA, the Superintendent requires:
   (a) either:
      (i) an actuarial opinion which states that the ratio of the market value of the assets of the plan to the solvency liabilities of the plan is 1.0 or more prior to the refund being made, and,

where applicable, identifies any additional contributions required to maintain a ratio of 1.0 following the refund; or

(ii) an actuarial opinion which states that the ratio of the market value of the assets of the plan to the solvency liabilities of the plan is less than 1.0 prior to the refund being made, and identifies any additional contributions required to maintain that ratio following the refund; and

(b) the refund will result in the equitable treatment of all active members, all deferred members or all retired members.

4. Where the actuarial opinion identifies any additional contributions which are necessary to satisfy the requirements in paragraphs 3(a)(i) or (ii) above, and the application satisfies all other applicable requirements of the PBA, Regulation and relevant policies, the Superintendent may consent to the application subject to the condition that the plan administrator confirm in writing that the additional contributions identified in the actuarial opinion have been made to the pension fund.

5. If the plan has been amended to deem required contributions to be additional voluntary contributions, the requirements of subsection 63(8) of the PBA and the administrative requirements set out above will apply.

6. In all cases, and notwithstanding that the foregoing requirements are met, the Superintendent has discretion under subsection 63(8) of the PBA to grant or refuse consent.

7. If the applicant amended the plan to provide for the refund, the applicant should ensure the applicable requirements of the PBA, Regulation and relevant policies concerning plan amendments have been satisfied.

8. This policy does not apply to refunds arising from provisions of the *Income Tax Act* (Canada) respecting the refund of contributions to plan members or former members to avoid revocation of registration by the Canada Customs and Revenue Agency (formerly Revenue Canada). Refunds for this purpose must comply with the requirements of subsections 47(13) and 47(14) of the Regulation as applicable. Applicants should refer to policy A400-500 ("Reduction of Accrued Benefits and/or Refunds or Payments to Avoid Revocation by Revenue Canada of Registration of a Pension Plan – Exemptions under PBA, R.S.O. 1990, ss. 18(1), s. 26 and s. 47 of O. Reg. 909").

The Application for Refund of Contributions to Plan Members or Former Members

9. The format and content of the application should be consistent with Schedule I to this policy.

10. The onus is on the applicant to satisfy the Superintendent that the application complies with the PBA and Regulation. The applicant should also demonstrate compliance with the applicable policies published by FSCO and the former Pension Commission of Ontario.

Filing the Application

11. (a) The general procedure is outlined in policy S850-200 ("Filing Applications with the Superintendent of Financial Services").

(b) The application, including attachments, should be submitted on 8-1/2" x 11" paper (subject to legibility).

12. The application is filed with the Superintendent by sending **three (3)** copies to:

    Superintendent of Financial Services
    Financial Services Commission of Ontario
    5160 Yonge Street, 17th Floor
    Box 85
    North York, ON M2N 6L9

13. **Three (3)** copies of any information or materials which are supplemental to the initial filing and which are required in order to complete the application should be filed with the Superintendent.

14. Upon receipt, the application will be acknowledged.

Decision or Proposed Decision of the Superintendent

15. The Superintendent will make a decision about the application after the Superintendent receives either:
    (a) a complete application; or
    (b) a written request from the applicant asking that the application proceed as is, where the applicant has been advised by FSCO staff that the application is incomplete.

16. Following a review of the application, the Superintendent will make a decision and will issue either:
    (a) an unconditional consent;
    (b) a notice of proposal to attach terms and conditions to a consent; or
    (c) a notice of proposal to refuse to consent.

17. If the Superintendent consents unconditionally to the refund, the Superintendent's consent along with written reasons will be communicated to the applicant.

18. If the Superintendent proposes to consent to the refund with attached terms and conditions or to refuse to consent, the Superintendent will serve a notice of proposal on the applicant as required by subsection 89(4) of the PBA.

19. A notice of proposal issued under subsection 89(4) of the PBA shall state that the person on whom the notice is served is entitled to a hearing by the Financial Services Tribunal ("Tribunal") if the person delivers to the Tribunal, within thirty days (30) days after service of the notice of proposal, a written notice requiring a hearing.

20. If no notice requiring a hearing is received within the specified time period, the Superintendent may carry out the proposed decision.

21. Applicants should refer to policy S850-100 ("Delegation of the Superintendent's Authorities") and policy S850-200 ("Filing Applications with the Superintendent of Financial Services") for additional information on the decision-making process.

Schedule I

Format and Content of the Application to the Superintendent for Consent to a Refund of Contributions to Plan Members or Former Members

DATE:	*Enter the date of the application.*
PLAN ADMINISTRATOR:	*Provide the correct full legal name of the plan administrator making the application.*
PENSION PLAN:	*Provide the full legal name of the pension plan and the registration number.*
APPLICANT:	*Provide the name, title and business address of the corporate officer authorized to act on the administrator's behalf. (Unless otherwise indicated in the application, all communication from the Superintendent and staff of FSCO will be directed to the agent who files the application on the applicant's behalf.*

Nature of the Application:

Provide a full description of what is being asked of the Superintendent with reference to specific section(s) of the PBA and Regulation pursuant to which the application is being made.
For example:

> Application for the Superintendent's consent pursuant to subsection 63(7) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended, to a refund of contributions plus interest to *(identify the members or former members to whom the contributions are being refunded)* in the aggregate amount of $ *(enter the total amount of contributions plus interest at the effective date of the refund)*, as at *(enter effective date of the refund)* plus interest thereon to the date of payment.

Actuary/Counsel/Agent:

Provide the name of any person acting as actuary, counsel or agent for the plan administrator making the application, or acting on behalf of the members, former members or other persons. If there are no such persons, please indicate "None".

> Actuary/Counsel/Agent for the Applicant (and name of firm):
>
> Actuary/Counsel/Agent for the members/former members/union/etc. (and name of firm):

Collective Bargaining Agent:

Provide the name of the Collective Bargaining Agent(s) who represent any members or former members of the pension plan.

Background:

Provide a brief summary of the background of the plan leading up to the application including:

- *the effective date of the plan;*
- *description of the members and/or former members (e.g., all actives, all deferreds or all retirees)category to receive the refund;*
- *the basic benefit structure; and*
- *any other information which will assist in understanding the application.*

Subsection 63(8) of the PBA – Conditions:

In the following subsections, the applicant must satisfy the Superintendent that the conditions of subsection 63(8) of the PBA have been met.

(a) Plan Provisions:

Indicate the provisions of the plan or plan amendment that provide for the refund of contributions to plan members or former members. Attach a copy of the relevant plan provisions or plan amendment.

(b) Employer Funding Responsibility:

Indicate the provisions of the plan or plan amendment that provide that the employer has assumed responsibility for funding all pension benefits associated with the contributions being refunded. Attach a copy of the relevant plan provisions or plan amendment.

Funded Status:

Either include:

(i) an actuarial opinion which states that the ratio of the market value of the assets of the plan to the solvency liabilities of the plan is 1.0 or more prior to the refund being made, and, where applicable, identifies any additional contributions required to maintain a ratio of 1.0 following the refund; or

(ii) an actuarial opinion which states that the ratio of the market value of the assets of the plan to the solvency liabilities of the plan is less than 1.0 prior to the refund being made, and identifies any additional contributions required to maintain that ratio following the refund.

Members or Former Members to Receive Refund:

The applicant must explain how the refund will result in the equitable treatment of all active members, all deferred members or all retired members.

Other Jurisdictions:

The applicant must disclose whether or not the plan has members or former members with benefits resulting from employment in a jurisdiction other than Ontario. Where the application affects members or former members with benefits resulting from employment in a jurisdiction other than Ontario, the applicant must include a table indicating the number of members or former members in each jurisdiction, including Ontario, affected by the application. The applicant must also provide certification in the form set out in Schedule II that the applicant has complied with the requirements of those jurisdictions for refunds of contributions to members or former members with respect to the affected members or former members.

Certification:

The application must include as an attachment a completed certification in the form set out in Schedule II to this policy signed by the administrator making the application, or an agent or representative of the administrator authorized to act on the administrator's behalf.

Indicate where in the application the certification may be found.

Other Submissions:

The application should include copies of any written representations relating to the application received by the applicant directly or through the Superintendent, as well as any responses by the applicant.

The application should also include any other submissions which may be relevant.

Attachments:

Provide a list of all attachments to the application. The attachments should be listed in an order that corresponds to the order of the subject matter under this document and, where applicable, in chronological order. Where an application is bound, the relevant tab numbers and their contents should be listed.

Schedule II

Administrator's Certification of Application in Accordance with Subsection 63(7) of the *Pension Benefit Act*

Re: PENSION PLAN: _____

(insert full plan name and plan registration number)

(the "Pension Plan")

I AM: *(please mark the appropriate box with an "X")*

- ☐ the Administrator as set out in this application (the "Administrator"); or
- ☐ an agent or representative of the Administrator authorized by the Administrator to make this application and provide this certification;

I CERTIFY TO THE SUPERINTENDENT OF FINANCIAL SERVICES THAT:

(a) *(identify the members or former members to whom the contributions are being refunded)* made contributions into the pension fund of the Pension Plan, plus interest, totalling $ *(enter the total amount of contributions to be refunded plus interest to the effective date of the refund)* as at *(enter the effective date of the refund)*, plus interest thereon to the date of payment;

(b) the Pension Plan provides for the refund referred to in (a);

(c) the Employer, (*name of employer*), as defined in the Pension Plan, has assumed responsibility for funding all pension benefits associated with the contributions;

(d) the application contains all of the documents and information material to an application made in accordance with ss. 63(7) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended;

(e) the information contained in the application and the attached documents is true and accurate, and the application is complete;

(f) the pension legislation of the following Canadian jurisdictions other than Ontario applies to one or more members, former members or other beneficiaries of the Pension Plan affected by the application: _____;

(insert names of all relevant Canadian jurisdictions; if none, leave blank)

and

(g) where the pension legislation of one or more Canadian jurisdictions other than Ontario applies to one or more members, former members or other beneficiaries of the Pension Plan affected by the application:

(i) I am aware of, or have consulted with professionals who have advised me of, the requirements of the pension legislation of those other jurisdictions;

(ii) I have reviewed this application; and

(iii) to the best of my knowledge and belief, based on the information and advice provided to me, including that referred to herein, this application complies with the requirements for refunds of contributions to members or former members in the pension legislation of those other jurisdictions.

DATED this _____ day of _____, _____.
(day) *(month)* *(year)*

_____
Signature of Administrator or Administrator's Agent or Representative

_____
Name of Administrator or Administrator's Agent or Representative (printed)

_____

_____

_____
Address of Administrator or Administrator's Agent or Representative (printed)

It is an offence under the Criminal Code, R.S.C. 1985, c. C-46, as amended, for anyone to knowingly make a false document with the intent that it be acted on as genuine.

SECTION:	Refund of Contributions to Plan Members
INDEX NO.:	R400-108
TITLE:	Refund of Additional Voluntary Contributions to Active Members – PBA, 1990 ss. 63(2)
APPROVED BY:	Superintendent of Financial Services
PUBLISHED:	FSCO Pension Bulletin 9/2 and on FSCO website
EFFECTIVE DATE:	January 1, 2001
REPLACES:	R400-106

May active members of a pension plan receive a refund of additional voluntary contributions?

Yes, provided that the terms of the pension plan give active members the right to a refund of additional voluntary contributions with interest, those assets may be paid out of the plan fund in accordance with subsection 63(2) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended. There is no requirement to obtain the Superintendent's consent to a refund of additional voluntary contributions.

However, if a contributory pension plan is amended to retroactively provide benefits on a non-contributory basis, required member contributions made to the effective date of the amendment are usually "deemed" to be additional voluntary contributions. Under these circumstances, "deemed" additional voluntary contributions may not be refunded to plan members without the consent of the Superintendent.

SECTION:	Surplus
INDEX NO.:	S900-509
TITLE:	Application by an Employer for Payment of Surplus from a Wound-up Plan – PBA ss. 78 and 79, as amended – Regulation 909 s. 8, as amended
APPROVED BY:	Superintendent of Financial Services
PUBLISHED:	FSCO Pension Bulletin 9/2 and on FSCO website
EFFECTIVE DATE:	January 1, 2001
REPLACES:	S900-508, S900-507

Subsection 78(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P. 8 ("PBA"), as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 ("FSCO *Act*"), provides that surplus may not be paid to an employer unless the Superintendent of Financial Services ("Superintendent") consents to the payment. The Superintendent shall not consent to an application to distribute surplus to an employer ("surplus application") until specific requirements and conditions have been satisfied. Statements and documents supporting the applicant's assertion that the requirements and conditions have been satisfied should be included in the surplus application to the Superintendent.

This policy replaces S900-508 ("Application by an Employer for Payment of Surplus from a Wound-Up Plan", PBA ss. 78 and 79 and O. Reg. 909 s. 8") in respect of surplus applications filed with the Superintendent on or after January 1, 2001. This policy also replaces S900-507 ("Surplus Applications Affecting Members, Former Members, or Other Persons with Employment in a Jurisdiction Other Than Ontario"), the provisions of which have been revised and incorporated herein.

Note: While this policy has been prepared as a guideline, it does not alter any requirements of the FSCO Act, PBA or Regulation 909, R.R.O. 1990 ("Regulation"). Where this policy conflicts with the FSCO Act, PBA or Regulation, the FSCO Act, PBA or Regulation govern. While compliance with this policy is intended to facilitate the application process, the Superintendent has the ultimate authority to decide whether to consent to or reject your application, and the Superintendent is not bound by this policy.

PART I of this policy provides the procedure for bringing a surplus application to the Superintendent on a full wind-up pursuant to section 78 of the PBA and section 8 of the Regulation.

PART II of this policy provides the modifications to Part I which apply to a surplus application made to the Superintendent on a partial wind-up pursuant to section 78 of the PBA and section 8 of the Regulation.

General

The onus is on the applicant to satisfy the Superintendent that the surplus application meets the requirements of the PBA and the Regulation. The applicant should also demonstrate compliance with all relevant policies, procedures and administrative practices.

Policy S850-200 ("Filing Applications with the Superintendent of Financial Services") outlines the general procedure for filing those applications, including surplus applications made to the Pension Commission in the first instance before the full proclamation of the *FSCO Act*.

It is the applicant's responsibility to decide whether plan specific circumstances warrant the inclusion of additional information or documentation to support the surplus application. For example, additional information about members or former members or additional plan documentation may be relevant in the following circumstances:

- the source of all or a portion of the assets of the pension fund can be traced to the pension fund of another pension plan;
- all or a portion of the liabilities of a pension plan were converted to liabilities determined on another basis (a plan conversion);
- there was a partial wind-up at any time prior to the date of wind-up; or
- all or a portion of the liabilities of a pension plan relate to members, former members or other persons with employment in a jurisdiction other than Ontario.

If information necessary for the Superintendent to approve a surplus application is missing, the Superintendent will not be able to consent.

The content of this policy is set out as follows:

PART I DISTRIBUTION OF SURPLUS TO AN EMPLOYER ON FULL WIND-UP

General Principles ..... Page 28

Notice of the Surplus Application ..... Page 28

Written Agreements ..... Page 31

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PART II DISTRIBUTION OF SURPLUS TO AN EMPLOYER ON PARTIAL WIND-UP

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Certification of Compliance with Surplus Requirements of Other Jurisdictions ..... Page 42

PART I

DISTRIBUTION OF SURPLUS TO AN EMPLOYER ON FULL WIND-UP

General Principles

1. Where an employer wants to be paid surplus on plan wind-up, section 78 of the PBA provides that the employer must apply and that no payment may be made without the Superintendent's prior consent. Before the Superintendent can propose to consent to a surplus application, the applicant must satisfy the requirements of subsection 78(2) of the PBA concerning notice and disclosure of all plan provisions relevant to surplus entitlement on wind-up. In addition, the requirements of subsections 79(3) and (4) of the PBA must be satisfied, as well as all the requirements of the Regulation.
2. Generally, an employer winding up a pension plan should not file a surplus application until after the payment of basic benefits out of the plan has been approved.
3. Compliance with the requirements of the *FSCO Act*, PBA, Regulation and conditions identified in any policy, procedure and administrative practice of the former PCO or of FSCO, which affects the surplus application, is the responsibility of the applicant.
4. Applicants are responsible for ensuring that the information contained in the surplus application and any supporting documents is complete and accurate.

NOTICE OF THE SURPLUS APPLICATION

Content

5. The Notice of the surplus application required by subsection 78(2) of the PBA must include the information prescribed under subsection 28(5) of the Regulation.
6. With respect to clause 28(5)(c) of the Regulation (i.e., surplus attributable to employee and employer contributions), the methodology used to determine the surplus attributable to employee and employer contributions should be consistent with policy S900-801 ("Surplus Attributable to Employer and Employee Contributions on Plan Wind-up").
7. With respect to clause 28(5)(e) of the Regulation (i.e., the statement that written submissions may be made to the Superintendent within 30 days of receipt of the notice), the notice must state that written submissions are to be directed to the Superintendent.
8. With respect to clause 28(5)(f) of the Regulation (i.e., authority for surplus reversion), there must be full and complete disclosure of all provisions of the plan and trust documentation from inception that may be relevant in determining entitlement to the payment of surplus on wind-up, including provisions in all current and prior plan texts, trust agreements, insurance contracts, employee booklets, employee notices, collective bargaining agreements, information brochures and any other documents that may be relevant.

   The actual wording of all the provisions from the plan and trust documentation from inception that may be relevant to surplus entitlement and to the question of authority to make plan amendments must

be cited in the Notice of the surplus application, along with a full analysis of their implications. The Notice of the surplus application must also include a complete historical analysis of all the plan and trust and other documentation that may be relevant to determine whether the plan constitutes a trust. If the plan at any time constituted a trust, the historical analysis must demonstrate that any amendment to the trust that has bearing on surplus entitlement was valid.

Where the plan and trust documentation do not contain explicit provisions addressing surplus entitlement, this fact must also be disclosed in the Notice of the surplus application. It is important to note that if, as of January 1, 1998, the pension plan did not provide for the distribution of surplus on wind-up, the applicant must refer to s. 79(4) of the PBA and its consequences for the surplus application.

If a surplus application requires a court order pursuant to subsection 8(2) of the Regulation, the applicant should refer to the procedure under policy S900-600 ("Making Application Under ss. 7a(2)(c)").

9. The Notice must state that the application and the analysis of the plan documents were prepared by the applicant, and that members, former members or other affected persons may wish to obtain independent legal advice with respect to the application and the proposed surplus distribution agreement before they give any consent.

10. With respect to clause 28(5)(g) of the Regulation (i.e., notice concerning access to copies of the wind-up report), if the office or location where the members were employed is closed, the employer must make and communicate alternative arrangements close to the location(s) where business was conducted for plan beneficiaries to review the wind-up report filed with the Superintendent in support of the surplus request.

11. If the Notice of the surplus application does not satisfy the requirements of the PBA and the Regulation, or the conditions identified in any policy, procedure or administrative practice of the former PCO or FSCO, or if there has not been complete, full and fair disclosure of all information that may be relevant, the Superintendent may give the employer the opportunity to re-transmit a modified Notice. The employer has a very high obligation of good faith to ensure that full and fair disclosure is given.

12. Subsection 28(5.1) of the Regulation requires that the employer file a copy of the Notice of the surplus application with the Superintendent before it is transmitted.

    The Notice of the surplus application should be filed with the Superintendent by sending one (1) copy to:

    Superintendent of Financial Services
    Financial Services Commission of Ontario
    5160 Yonge Street, 17th Floor
    Box 85
    North York, ON M2N 6L9

13. With respect to paragraph 7 and subparagraph 29(j), a copy of any written representations filed with the Superintendent will be forwarded to the employer.

Transmitting the Notice of the Surplus Application

14. After the employer files its Notice of the surplus application with the Superintendent, the employer is required to transmit the Notice of the surplus application to all persons listed in subsection 78(2) of the PBA. The employer must satisfy the Superintendent that full and fair notice has been given to those persons.
15. Transmittal must be by personal delivery or first class mail in accordance with subsection 112(1) of the PBA (see paragraphs 17 and 18).
16. Where the plan wind-up results from an event affecting the employment of the members, such as a plant closure, all members participating in the plan on or after the date notice of the event is given must be included as members for purposes of the wind-up, including the surplus distribution. This requirement applies even if a member terminates or is terminated after the notice date but prior to the event actually occurring. Applicants should also refer to policy W100-101 ("Filing Requirements and Procedure").

Public Advertisement

17. The Superintendent may authorize delivery of the Notice of the surplus application by public advertisement or otherwise in accordance with subsection 112(3) of the PBA if the Superintendent is satisfied that it is not reasonable to give individual notice to all persons in accordance with paragraph 14.
18. Where an applicant requests the Superintendent's authorization to deliver the Notice of the surplus application by public advertisement, the information provided in the draft public advertisement submitted with the request to the Superintendent must clearly indicate the following:
    (a) to whom the notice is addressed (e.g. former members and other persons entitled to payments from the wound-up plan or any applicable predecessor plan(s));
    (b) the reason that these persons are being contacted (i.e., wind-up of the pension plan in a surplus position and the surplus application);
    (c) where the details of the surplus application will be made available; and
    (d) information that persons to whom notice has been transmitted may make written representations to the Superintendent with respect to the surplus application within thirty (30) days after receiving the notice.

Written Agreement (Surplus Applications Pursuant to Clause 8(1)(b) of the Regulation)

Content

19. When considering the surplus application, the Superintendent must be satisfied that the employer has:
    (a) provided the affected members, former members and other persons with full and fair disclosure in the copy of the Notice of the surplus application and a copy of the proposed surplus distribution agreement, before obtaining the written consent of these persons;
    (b) provided the affected members, former members and other persons who are

not currently represented by independent legal counsel with a reasonable opportunity to obtain independent legal advice with respect to the Notice of the surplus application and the proposed surplus distribution agreement;

(c) given these persons sufficient time to consider the surplus application, before the employer obtains the written consent of these persons; and

(d) obtained the number of written agreements required under the Regulation.

20. The surplus distribution agreement must be in writing and must provide for:

(a) the name of the individual;

(b) the signature of the individual;

(c) the date on which it is signed; and

(d) the signature of the employer.

Transmitting the Written Agreement

21. In order to obtain the written agreements required under clause 8(1)(b) of the Regulation, a copy of the proposed surplus distribution agreement must be given to all persons listed in subsection 78(2) of the PBA. In accordance with subsection 112(1) of the PBA, transmittal must be by personal delivery or first class mail.

A copy of the proposed surplus distribution agreement should be transmitted along with the Notice of the surplus application.

Written Agreements

22. Normally, to satisfy subclause 8(1)(b)(iii) of the Regulation, an applicant should obtain the written agreement of at least two-thirds of the aggregate of those former members and other persons who are entitled to payments under the pension plan on the date of wind-up. This requirement is subject to the Superintendent's discretion following a review of the circumstances of each surplus application.

23. Legal counsel may sign the agreement on behalf of the members they represent at the time the agreement is signed, provided such representation arrangement satisfies the requirements of policy S900-503.

24. The appropriate collective bargaining agent for the purposes of subclause 8(1)(b)(ii) of the Regulation is the collective bargaining agent who represents certain plan members at the date the collective bargaining agent signs the agreement on behalf of those members.

25. A collective bargaining agent may enter into a written agreement only on behalf of those plan members represented by the agent. Therefore, if a pension plan involves more than one bargaining agent, the written agreement of each bargaining agent is required.

26. If a pension plan is provided for both unionized and non-unionized members, in addition to the written agreement of the collective bargaining agent(s), the written agreement of at least two-thirds of those members not represented by the bargaining agent(s) must be obtained.

27. The written agreement of a collective bargaining agent who represents the members of the pension plan must be obtained, even where the collective bargaining agent does not bargain the pension plan.

The Surplus Application

28. The format and content of the surplus application should be consistent with Schedule I to this policy.

29. All material required by the PBA and Regulation must be attached to the surplus application, including:

    (a) A list, by class, of the names of members, former members or other persons who are affected by the wind-up.

    (b) A certified copy of the notice referred to in subsection 28(5), pursuant to subsection 28(6) of the Regulation.

    (c) A statement that the employer has complied with subsection 78(2) of the PBA.

    (d) A list, by class, of the names of members, former members or any other persons who received the Notice of the surplus application, the date the last Notice was transmitted and the form of delivery of the Notice.

    (e) Copies of all plan and trust documentation from inception, including all current and prior plan texts, trust agreements, insurance contracts, employee booklets, employee notices, collective bargaining agreements, information brochures and any other documents that may be relevant to surplus entitlement. The applicant should highlight the parts of the plan and trust documentation that the applicant believes may be relevant to surplus entitlement. Full documents should be arranged in chronological order and clearly labelled.

    (f) Copies of the title page and the balance sheet (or any updated balance sheet) of the wind-up report as of the effective date of the wind-up giving rise to the surplus application and the actuary's certification from the wind-up report or any supplemental wind-up report.

    A supplement to a wind-up report will be required if it is discovered that the initial report does not reflect the surplus distribution proposals outlined in the surplus application.

    (g) Information required to be submitted to staff in accordance with policy S900-801 ("Surplus Attributable to Employer and Employee Contributions on Plan Wind-up").

    (h) The approval by the Superintendent of the payment of basic benefits based on the wind-up report and any supplementary report.

    (i) A copy of the most recent collective agreement(s) if some or all of the affected members are represented by a collective bargaining agent(s).

    (j) Any written representations objecting to the surplus application received by the applicant directly or through the Superintendent, as well as any response(s) by the applicant.

(k) Disclosure as to whether or not the Application affects members, former members or other persons with employment in a jurisdiction other than Ontario:

Where the Application affects members, former members or other persons with employment in a jurisdiction other than Ontario (the "Affected Members"), a table indicating the number of members, former members or other persons in each jurisdiction, including Ontario, affected by the application. In addition, the Applicant must provide certification in the form set out in Schedule II that the Applicant has complied with the requirements for surplus distribution of those other jurisdictions with respect to the Affected Members.

The Superintendent reserves the right to review the certification and to require additional information or explanation of the contents of the certification before proceeding with the application.

(l) Any submissions which may be relevant to the surplus application.

Where other materials or information which may be relevant are discovered after the surplus application has been filed, such materials or information must be filed as an addendum to the initial surplus application (see paragraph 31).

(m) Where the surplus application is made pursuant to clause 8(1)(b) of the Regulation.

i) a copy of the proposed surplus distribution agreement;

ii) a list, by class, of the names of members, former members or other persons who received a copy of the proposed surplus distribution agreement, the last date the agreement was transmitted and the form of delivery of the agreement;

iii) a sample copy of the written agreement obtained from a plan member, former member, or other person with respect to the proposed surplus distribution agreement;

iv) copies of the written agreement(s) between the employer and any collective bargaining agent(s) that pertain to the surplus distribution agreement; and

v) a list of the members, former members or other persons who did not agree to the proposed distribution agreement or did not respond.

(n) Where the surplus application is made pursuant to subsection 8(2) of the Regulation, the applicant should refer to policy S900-600 ("Making Application Under ss. 7a(2)(c)"). If the applicant has already obtained a court order concerning entitlement to surplus and distribution of funds from surplus, a copy of the court order must be attached to the surplus application.

Filing the Surplus Application

30. (a) The general procedure is outlined in policy S850-200 ("Filing Applications with the Superintendent of Financial Services").

(b) The surplus application, including attachments, should be submitted on 8-1/2" x 11" paper (subject to legibility).

31. The surplus application is filed with the Superintendent by sending four (4) copies to:

    Superintendent of Financial Services
    Financial Services Commission of Ontario
    5160 Yonge Street, 17th Floor
    Box 85
    North York ON M2N 6L9

    Four (4) copies of any information or materials which are supplemental to the initial filing and which are required in order to complete the surplus application should be filed with the Superintendent.

32. Upon receipt, the surplus application will be acknowledged.

33. The Superintendent will not consider the surplus application unless the Superintendent has approved the payment of basic benefits on the basis of the wind-up report.

34. The applicant must forward a copy of the surplus application to the plan administrator.

35. For surplus applications made pursuant to clause 8(1)(b) of the Regulation, a copy of a sample signed written agreement should be included in each of the four (4) copies submitted to the Superintendent. As well, two full sets of all of the signed written agreements obtained from plan members, former members, and other persons with respect to the disclosed surplus distribution agreement must be filed with the Superintendent. One set should include all the original signed written agreements.

Review Process

36. (a) If staff believe that an application is incomplete, they will advise the applicant in writing. The applicant must submit four (4) copies of the documentation required to complete the application.

    (b) The review of a surplus application will not proceed until the earlier of the date when:

    (i) staff receive all of the information requested;

    (ii) the applicant submits a written request asking that the surplus application proceed as is (i.e., without submitting the additional information that staff have requested); or

    (iii) the time period for a response, as set out in the letter from staff, expires.

37. Staff will then review the surplus application and all other filed materials for compliance with the FSCO *Act*, PBA, Regulation and relevant policies, procedures and administrative practices. If any compliance concerns are identified, staff will send a letter outlining their concerns to the applicant, the collective bargaining agent(s) of the members (if applicable), and any person who has made written representations under section 78(3) of the PBA.

38. Staff's letter will specify the time period in which the applicant, the collective bargaining agent(s) of the members (if applicable) or any person who has made written representations under section 78(3) of the PBA must provide a written response to the compliance concerns, if they wish to have the response considered in the decision-making.

    Four (4) copies of the written response must be submitted to the Superintendent.

39. The Superintendent's proposed decision will be served on the applicant and on any person who has made written representations under s. 78(3) of the PBA, by way of a notice of proposal with written reasons.

40. A person on whom the notice of proposal is served is entitled to a hearing before the Financial Services Tribunal ("Tribunal") under s. 89(6) of the PBA if the person delivers to the Tribunal written notice requiring a hearing within thirty (30) days after being served with the notice of proposal.

41. If no notice requiring a hearing is received within the specified time frame, the Superintendent may carry out the proposed decision.

42. Applicants should refer to policy S850-100 ("Delegation of the Superintendent's Authorities") for additional information on the decision-making process.

Member Statement

43. On March 3, 2000, the Regulation was amended to include a new section 28.1, which provides that if there is surplus on the wind-up of a plan, in whole or in part, the administrator shall provide, within the prescribed period, a statement containing the prescribed information about surplus to affected members. These statements are to be provided after the Superintendent has approved the wind-up report, including the disposition of surplus. Applicants should ensure that the requirements of this section have been satisfied.

PART II DISTRIBUTION OF SURPLUS TO AN EMPLOYER ON PARTIAL WIND-UP

Modifications to Part I for Partial Wind up

Part I procedures will apply with respect to partial wind ups subject to the following:

1. For the purpose of a surplus application under Part II of this policy, any reference to "full wind-up" or "wind-up" under Part I of this paper should be read as "partial wind-up".
2. Those persons listed in subsection 78(2) of the PBA must receive the Notice of the surplus application by personal delivery or first class mail in accordance with subsection 112(1) of the PBA.
3. The following persons must also receive a copy of the proposed surplus distribution agreement:
    (a) all persons who are affected by the partial wind-up (i.e., those persons who are entitled to receive payment from the pension plan as a result of the event which gave rise to the partial wind-up),
    (b) all persons who ceased to be employed as a result of the event which gave rise to the partial wind-up, and
    (c) each collective bargaining agent that represents any members under the plan at the date of partial wind-up.

    The applicant must satisfy the Superintendent that full and fair notice has been given.

4. For the purposes of obtaining written agreement in accordance with subclause 8(1)(b)(ii) of the Regulation, the appropriate collective bargaining agent is the collective bargaining agent who represents certain plan members at the date the collective bargaining agent signs the agreement on behalf of those members.

   No written agreement is required from a collective bargaining agent who, at the date of partial wind-up, does not represent members affected by the partial wind-up.

5. Where written agreement is required pursuant to subclause 8(1)(b)(ii) of the Regulation, and there is no collective bargaining agent who represents the members who are affected by the partial wind-up, written agreement must be obtained from at least two-thirds of the members who are affected by the partial wind-up.

6. For the purposes of subclause 8(1)(b)(iii) of the Regulation, the written agreement of at least two-thirds of the aggregate of the former members and other persons who are directly affected by the partial wind-up should be obtained. This requirement is subject to the Superintendent's discretion following a review of the circumstances which are applicable to each individual surplus application.

7. The applicant must satisfy the Superintendent that the requirements of the PBA and Regulation have been met.

Schedule I

Format and Content of the Application to the Superintendent for Consent to the Refund of Surplus to an Employer

DATE: *Enter the date of the surplus application.*

EMPLOYER: *Provide the correct legal name of the employer making the surplus application.*

PENSION PLAN: *Provide the full registered name of the pension plan and the registration number.*

APPLICANT: *Provide the name, title and business address of the corporate officer authorized to act on the employer's behalf. (Unless otherwise indicated in the surplus application, all communication from the Superintendent and staff of FSCO will be directed to the agent or counsel who files the surplus application on the applicant's behalf.)*

Nature of the Surplus Application:

Provide a full description of the surplus application to the Superintendent with reference to the specific section(s) of the PBA and Regulation pursuant to which the surplus application is being made. For example:

> Application for the Superintendent's consent pursuant to subsection 78(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended, and clause 8(1)(b) of Regulation 909, R.R.O. 1990, as amended, to a payment of surplus to *(provide full legal name of the employer)* in the amount of $ *(show the amount sought at the effective date of wind-up)* as at *(show the effective date of wind-up)* plus investment earnings thereon to the date of payment *(add reference if employer is seeking any other adjustment in its request for the surplus refund).*
>
> This application includes a surplus distribution agreement whereby *(x)* per cent of the surplus as of the effective date of wind-up will be distributed to the members, former members and other persons entitled to benefits as of the effective date of wind-up in the form of indexed benefits.

Appropriate modifications will be required for surplus applications based on a court order pursuant to subsection 8(2) of the Regulation.

Actuary/Counsel/Agent:

Provide the name of any person acting as the agent or counsel for the employer making the surplus application, or acting on behalf of the members, former members or other persons. If there are no such persons, please indicate "None".

> Actuary for the Applicant (and name of firm):
>
> Counsel for the Applicant (and name of firm):
>
> Actuary for the Members/former members/union/etc. (and name of firm):
>
> Counsel for the Members/former members/union/etc. (and name of firm):

Plan Administrator:

Provide the name and address of the person designated to act as plan administrator, if different from the corporate officer acting for the applicant employer.

Collective Bargaining Agent:

Provide the name of the Collective Bargaining Agent(s) who represent any members or former members of the pension plan.

Background:

Provide a brief summary of the background of the plan leading up to the surplus application including:

- *the effective date of the plan;*
- *the classes of members covered by the plan;*
- *the basic benefit structure (e.g. "non-contributory", "flat benefit plan");*
- *a brief chronology of the plan and prior versions thereof, including any pension plan from which assets of the wound-up pension plan can be traced (include references to asset transfers to or from the pension fund of another pension plan, plan conversions, and partial wind ups that may have occurred prior to the date of wind-up);*
- *the corporate history relevant to the plan and any predecessor plans, including the background to any changes in the name of the employer associated with the pension plan;*
- *the effective date and reasons for the wind-up of the pension plan; and*
- *any other information which will assist in understanding the surplus application.*

Subsection 78(2) of the PBA – Notice Requirements

The applicant must satisfy the Superintendent that the persons listed in subsection 78(2) have received full and fair notice and that the requirements of the PBA and Regulation have been satisfied.

(a) Subsections 28(5) and 28(5.1) of the Regulation:

Provide information indicating how the applicant has complied with

- *subsection 28(5) and any related policies, procedures or administrative practices setting out the minimum content to be included in the Notice of the surplus application required under subsection 78(2) of the PBA. This minimum content does not alter the applicant's obligation to ensure that full and fair notice is given.*
- *subsection 28(5.1) which requires that a copy of the Notice of the surplus application be filed with the Superintendent prior to transmittal to the members, former members and other persons.*

(b) Subsection 28(6) of the Regulation:

Provide information demonstrating compliance with subsection 28(6) of the Regulation which requires that the surplus application be accompanied by a certified copy of the Notice of the surplus application signed by the corporate officer authorized to act for the applicant, a statement signed by that corporate officer that subsection 78(2) of the PBA has been complied with, the date the last Notice of the surplus application was distributed and details as to the classes of persons who received notice. Include reference to the attachment or tab at which the certified copy of the notice may be found.

Subsection 112(3) of the PBA – Alternate Service:

If, in lieu of individual notice, the Notice of the surplus application is transmitted by public advertisement, indicate the classes or groups who were served by the public advertisement, the dates and newspapers in which the advertisement ran and provide a copy of the advertisement.

If, in lieu of individual notice, the Notice of the surplus application is transmitted by an alternative form of notice other than public advertisement, indicate the classes or groups who were served by the alternative form of notice , the dates and method by which the alternative form of notice was served and provide a copy of the alternative form of notice.

Refer to the attachment or tab in the surplus application where a copy of the public advertisement or alternative form of notice and the Superintendent's authorization for alternative service are found.

Subsection 79(3) of the PBA – Conditions Precedent to a Proposal to Consent

In the following sections, the applicant must satisfy the Superintendent that all the conditions in the PBA and Regulation have been met.

(a) Clause 79(3)(a) – The Plan has a Surplus:

The applicant must demonstrate that the plan has a surplus.

Provide the date of the letter from the Superintendent approving the distribution of the members' and former members' basic benefits. Refer to the attachment or tab at which extracts of the wind-up report and supplemental report and a copy of the Superintendent's letter may be found. Include in the surplus application a brief summary of the balance sheet for the plan as at the effective date of wind-up along with an updated balance sheet if there has been any significant change in the figures. For example:

Balance Sheet	**As at effective date of wind-up**	**As of** *(current date)*
Market value of assets	$ .00	$ .00
Liabilities		
Basic benefit entitlements	$ .00	$ .00
Liabilities for enhancements	$ .00	$ .00
Expenses	$ .00	$ .00
Surplus	$ .00	$ .00

Surplus distribution agreement as of *(date)*:

To employees	$ .00 (%)
To employers	$ .00 (%)

(b) Clause 79(3)(b) of the PBA – The Plan Provides for the Payment of Surplus to the Employer on the Wind-up of the Pension Plan:

The applicant employer must satisfy the Superintendent that the plan provides for the payment of surplus to the employer on wind-up. Therefore, the surplus application must establish that the employer is legally entitled to the payment of surplus on wind-up. The employer must provide a complete chronological history of the plan, and any predecessor or prior plans that may be relevant, and copies of all plan and trust documentation since inception, including all current and prior plan texts, trust agreements, insurance contracts, employee booklets, employee notices, collective bargaining agreements, information brochures and any other documents that may be relevant to the Superintendent's determination of whether a plan provides for the payment of surplus to the employer. The employer must also provide a full analysis showing how it reaches the conclusion that it, and not the plan beneficiaries, is entitled to the surplus.

Where there are prior pension plans from which the current plan assets can be traced, or that that may otherwise be relevant, the history must take into account the prior plan texts, trust agreements, insurance contracts, employee booklets, employee notices, collective bargaining agreements, information brochures and any other documents that may be relevant to the Superintendent's determination of whether a plan provides for the payment of surplus to the employer.

Where any plan or trust documentation that may be relevant has been amended since its inception, the history must spell out the authority under the plan or trust to amend the provision or document. The history must also refer to all provisions or documents that do not support the surplus application.

The applicant should highlight the portions of the documents that may be relevant to the Superintendent's decision on surplus entitlement, including those provisions that do ***not*** *support the applicant's claim to surplus. Complete documents must be included as attachment(s) to the surplus application and must be clearly labelled.*

All documents must be complete, arranged in chronological order and clearly labelled. All portions of the documents that may be relevant, whether or not they support the applicant's claim to surplus, must be highlighted.

As of January 1, 1998, if the pension plan did not provide for the distribution of surplus on wind-up, the applicant must refer to subsection 79(4) of the PBA and its consequences for the surplus application.

(c) Clause 79(3)(c) of the PBA – Provision has been made for the Payment of All Liabilities of the Pension Plan:

Outline the status of the distributions of basic benefits and surplus to members, former members and any other persons entitled to payments. If the Superintendent is not satisfied that adequate provision has been made for the payment of all liabilities of the pension plan, the Superintendent may propose to refuse the surplus application.

(d) Clause 8(1)(b) of the Regulation – Written Agreement

Provide a summary of the notices issued and signed surplus distribution agreements provided. For example:

	Total Number	Notices Issued	Written Consents	(%)
Employer	_____	_____	_____	_____
Collective Bargaining Agent(s)	_____	_____	_____	_____
Members	_____	_____	_____	_____
Former Members/ Other Persons	_____	_____	_____	_____

Subsection 8(2) of the Regulation - The Court Order

(a) Clause 8(2)(b) of the Regulation - Eligibility as a "Grandfathered Plan":

Provide information supporting the applicant's position that the surplus application is eligible to proceed under subsection 8(2), the "grandfathering provision".

The applicant may make application pursuant to clause 7a(2)(c) of O. Reg. 708/87 as that section read immediately before December 18, 1991 as *(enter the reason why the plan is a* "grandfathered plan", *i.e.*, "the notice of proposal to wind-up was filed prior to December 18, 1991" - *enter the date the notice of proposal to wind-up the plan was given to the Superintendent).*

(b) Clause 8(2)(a) of the Regulation - The Status of the Application to Court:

Provide information concerning the status of the application to the court. Refer to the attachment which indicates the applicant's intention or where the copy of the order is located.

The applicant has applied to the court for an order pursuant to clause 7a(2)(c) of O. Reg. 708/87 as that section read immediately before December 18, 1991 (*enter* "and has obtained" *or* "and is to obtain") an order for payment of the surplus assets to the applicant on termination of the Plan.

Other Jurisdictions

The applicant must disclose whether or not the plan has members, former members or other persons with benefits resulting from employment in a jurisdiction other than Ontario. Applicants should refer to paragraph 29(k) under "The Surplus Application", of this policy and complete the attached certification ("Schedule II").

Representations

The employer must specify whether or not it received any objections or representations and attach to the surplus application copies of those objections or representations and any response(s) by the employer.

Attachments

Provide an index of all attachments to the surplus application. The attachments should be listed in the order that corresponds to the order of the subject matter under this document and, where applicable, in chronological order. Where a surplus application is bound, the relevant tab numbers and their contents should also be included in the index.

SIGNATURE

The application must be signed by the applicant, or the authorized officer or agent of the applicant. The person signing the application should print their name below their signature and should indicate the capacity in which they have signed the application (i.e., applicant or agent or authorized signing officer of the applicant).

Schedule II

Certification of Compliance with Surplus Requirements of Other Jurisdictions

DATE: *Enter the date of the surplus application.*

EMPLOYER: *Provide the correct legal name of the employer making the surplus application.*

PENSION PLAN: *Provide the full registered name of the pension plan and the registration number.*

APPLICANT: *Provide the name, title and business address of the corporate officer authorized to act on the employer's behalf. (Unless otherwise indicated in the surplus application, all communication from the Superintendent and staff of FSCO will be directed to the agent or counsel who files the surplus application on the applicant's behalf.)*

I Certify to the Superintendent of Financial Services that:

(a) I, the individual making this certification, am the applicant or the agent or authorized officer of the applicant;

(b) The application affects members, former members or other persons with employment in a jurisdiction other than Ontario (the "Affected Members");

(c) I am aware of, or have consulted with professionals who have advised me of, the requirements of the laws applicable to surplus distribution of the jurisdictions of the Affected Members, and I have reviewed the application in order to determine whether it complies with such laws;

(d) I certify that, to the best of my knowledge and belief, based on the information and advice provided me, including that referred to herein, this application complies with the requirements for surplus distribution of those jurisdictions outside of Ontario with respect to Affected Members.

DATED this _____ day of _____, _____.
(day) *(month)* *(year)*

_____
Signature of Administrator or Administrator's Agent or Representative

_____
Name of Administrator or Administrator's Agent or Representative (printed)

_____

_____

_____
Address of Administrator or Administrator's Agent or Representative (printed)

It is an offence under the Criminal Code, R.S.C. 1985, c. C-46, as amended, for anyone to knowingly make a false document with the intent that it be acted on as genuine.

Superintendent of Financial Services

Appointment of Administrators - Section 71 of the PBA

1) **Arthur Andersen Inc.** as the Administrator of the **IPCO Corporation Canadian Employees' Retirement Plan, (Registration No. 584417)**, effective immediately.

   DATED at Toronto, Ontario this 23rd day of November, 1999.

2) **PricewaterhouseCoopers Inc.** as the Administrator of the **Eaton Retirement Annuity Plan II (Registration No. 1036102)**, effective immediately.

   DATED at Toronto, Ontario this 1st day of December, 1999.

3) **PricewaterhouseCoopers Inc.** as the Administrator of the **the Eaton Superannuation Plan for Designated Employees (Registration No. 0593673)**, effective immediately.

   DATED at Toronto, Ontario this 1st day of December, 1999.

4) **Ronald A. Hubert** as the Administrator of the **Pension Plan of the T. Eaton Company Limited for R.A. Hubert (Registration No. 1029321)**, effective immediately.

   DATED at Toronto, Ontario this 3rd day of December, 1999.

5) **PricewaterhouseCoopers Inc.** as the Administrator of the **Eaton Retirement Annuity Plan III (Registration No. 1037035)**, effective immediately.

   DATED at Toronto, Ontario, this 1st day of December, 1999.

6) **Roy Evans** as the Administrator of the **Pension Plan of the T. Eaton Company Limited for Roy Evans (Registration No. 1031798)**, effective immediately.

   DATED at Toronto, Ontario this 3rd day of December, 1999.

7) **Rex P. Prangley** as the Administrator of the **Pension Plan of the T. Eaton Company Limited for Rex P. Prangley (Registration No. 1031806)**, effective immediately.

   DATED at Toronto, Ontario this 10th day of December, 1999.

8) **C. Reginald Hunter** as the Administrator of the **Pension Plan of the T. Eaton Company Limited for C. Reginald Hunter (Registration No. 1031780)**, effective immediately.

   DATED at Toronto, Ontario this 14th day of December, 1999.

9) **Buck Consultants** as the Administrator of the **Retirement Plan for Employees of Great Lakes Wire Limited, (Registration No. 915926)**, effective immediately.

   DATED at Toronto, Ontario this 19th day of December, 1999.

10) **Deloitte & Touche Inc. as the Administrator of the Retirement Plan for Hourly Employees of Superior Machine & Tool (Chatham) Limited, (Registration No. 327601)**, effective immediately.

    DATED at Toronto, Ontario this 29th day of December, 1999.

11) **Deloitte & Touche Inc.** as the Administrator of the **Superior Machine & Tool (Chatham) Limited Retirement Plan for Salaried Employees, (Registration No. 691642)**, effective immediately.

DATED at Toronto, Ontario this 29th day of December, 1999.

12) **Clarica Life Insurance Company** as the Administrator of the **Registered Pension Plan for Salaried (Non-Union) Employees of JPE Canada Inc. (Registration No. 1038330)**, effective immediately.

DATED at Toronto, Ontario this 19th day of January, 2000.

13) **William M. Mercer Limited** as the Administrator of the **Retirement Plan Sponsored by Diversified International Products Limited for Bruce McLarty (Registration No. 1022482)**, effective immediately.

DATED at Toronto, Ontario this 19th day of January, 2000.

14) **Clarica Life Insurance Company** as the Administrator of the **Pension Plan for Employees of Med-Chem Laboratories Limited and Participating Affiliates, (Registration No. 372896)**, effective immediately.

DATED at Toronto, Ontario this 16th day of March, 2000.

15) **Buck Consultants Limited** as the Administrator of the **Retirement Plan for Employees of Piggott Construction Limited, Registration No. C-4989,** effective immediately.

DATED at North York, Ontario this 6th day of July, 2000.

Withdrawal of Notice Proposal

Financial Services Commission of Ontario

Chief Executive Officer and Superintendent, Financial Services

5160 Yonge Street
Box 85, 17th Floor
North York ON M2N 6L9

Telephone: (416) 590-7000
Facsimile: (416) 590-7070

Commission des services financiers de l'Ontario

Ontario

Directeur général et surintendant, Services financiers

5160, rue Yonge
Boîte 85, 17e étage
North York ON M2N 6L9

Telephone: (416) 590-7000
Télécopieur: (416) 590-7070

May 19, 2000

DELIVERED

Ms. Bebe Brown, Registrar
Financial Services Tribunal
5160 Yonge Street, 14th Floor
Toronto ON M2N 6L9

Dear Ms. Brown:

RE: FST File #P0059-1999
Labourers' Pension Fund of Central and Eastern Canada, 573188 (the "Fund")

I hereby withdraw my Notice of Proposal to make an Order dated May 18, 1999 as the Applicant has complied with the terms thereof to my satisfaction.

In particular, the Actuarial Valuation as of December 31, 1998 dated August 1999 as augmented by letter dated October 27, 1999 (which was prepared by the Fund's Actuary based on the Actuarial Report on Proposed Restructuring and Long-Range Testing of the Plan dated January 1998) together disclose the existence and amount of the plan's solvency deficiency as at December 31, 1996, December 31, 1997 and December 31, 1998, and demonstrate the sufficiency on an ongoing and solvency basis of the contributions required by the collective agreement or agreements to provide for the benefits set out in the plan without consideration of any provision for reduction of benefits set out in the plan, pursuant to subsection 6(4) of the Regulation under the *Pension Benefits Act*.

Yours truly,

Dina Palozzi

Dina Palozzi
Chief Executive Officer and
Superintendent of Financial Services

c.c.: Mr. Ray Koskie, Koskie Minsky
Mr. O. D'Agostini, Labourers Pension Fund
Mr. Peter Hirst, Buck Consultants
Mr. David Gordon, FSCO, Pension Plans Branch
Mr. George Ma, FSCO, Pension Plans Branch
Ms. Lynda Sills, FSCO, Pension Plans Branch

Notices of Proposal to Make an Order

IN THE MATTER OF the *Pension Benefits Act* R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997, S.O. 1997*, c. 28 (the "*Act*");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 88 of the *Act*, respecting the **Labourers' Pension Fund of Central and Eastern Canada, Registration No. 0573188;**

TO: Board of Trustees
Labourers' Pension Fund of
Central and Eastern Canada
P.O. Box 40, Station "Q"
Toronto, ON
M4T 2L7

Attention: Mr. Onorio D'Agostini
Administrator

Administrator of the Labourers' Pension Fund of Central and Eastern Canada

Notice of Proposal to Make an Order

I PROPOSE TO MAKE AN ORDER in respect of the Labourers' Pension Fund of Central and Eastern Canada, Registration No. 0573188 (the "Plan") under section 88 of the *Act*. The Proposed Order and Reasons are attached to and form part of this Notice of Proposal to Make an Order.

YOU are entitled to a hearing by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act*, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing. Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, ON M2N 6L9
Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario this 18th day of May, 1999.

Dina Palozzi
Superintendent of Financial Services

IN THE MATTER OF The *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the *Act*);

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **McCormick, Rankin & Associates Designated Pension Plan. Registration No. 686675**

TO: McCormick, Rankin & Associates Limited
2655 North Sheridan Way
Mississauga, ON
L5K 2P8

Attention: Evelyn J. Gowan
Controller
Applicant and Employer

Notice of Proposal

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the *Act*, consenting to the payment, out of the **McCormick, Rankin & Associates Designated Pension Plan, Registration No. 686675** (the Plan), to McCormick, Rankin & Associates Limited in the fixed amount of $354,000.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that payment of all the benefits to the members as per the surplus sharing agreement defined in paragraph 5 below has been provided for.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. McCormick, Rankin & Associates Limited is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective January 31, 1997.
3. As at February 28, 1999 the surplus in the Plan was estimated at $1,668,586.
4. The Plan provides for payment of surplus to the Employer on the wind-up of the Plan.
5. The application discloses that by written agreement made by the Employer, and 100% of the members (as defined in the application), the surplus in the Plan at the date of payment, after deduction of the expenses related to the wind-up of the plan and the application as well as the extent to which investment returns fluctuate and interest rates on the fund differ from those assumed in the calculation of liabilities is to be distributed:
   a) a fixed amount of $354,000.00 to the Employer; and
   b) the portion of the assets in the Fund attributable to the contributions made by the Company on his behalf on or after January 1, 1992; plus
   c) the portion of the assets of the Fund attributable to the Company and Member's contributions to the Retirement Plan for the Employees of McCormick, Rankin & Associates Limited (the "Prior Plan") up to and including December 31, 1991, which were transferred to the Plan as at January 1, 1992; minus
   d) the commuted value of the Member's entitlement under the Plan; minus
   e) $2,000 multiplied by the number of years of the Member's service in either the Plan or the Prior Plan prior to 1996; in a taxable lump sum.

6. The Employer has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of a fixed amount of $354,000.00 of the surplus in the Plan.
7. The application appears to comply with section 78 of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing[1].

Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, ON
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, January, 2000.

Dina Palozzi
Superintendent of Financial Services

[1] NOTE - PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF The *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the *Act*);

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to consent pursuant to subsection 78(1) of the *Act* to payment of surplus out of the **Retirement Plan for Eligible Employees of Midland Lumber & Building Supplies Ltd., Registration No. 954990** (the Plan)

TO: Midland Lumber & Building Supplies Ltd.
200 Third Street
PO Box 39
Midland, ON
L4R 4K6

Attention: Mr. Robert F. Bray
President
Employer

Notice of Proposal

I PROPOSE, pursuant to subsection 78(1) of the *Act*:

1. **TO CONSENT** to payment out of the Plan to the Employer of 50% of the Royal Trust Surplus (defined as that portion, estimated at $181,748 as at December 31, 1997, of the surplus invested in the Bonavista Balanced Fund administered by the Royal Trust Corporation of Canada, plus investment earnings thereon to the date of payment less the reasonable expenses associated with its distribution).

   THIS CONSENT SHALL NOT BE EFFECTIVE UNTIL the Employer has satisfied me that 50% of the Royal Trust Surplus has been paid out of the Plan to all members, former members and other persons entitled to payment pursuant to the Surplus Sharing Agreements filed with the Employer's application.

2. **TO CONSENT** to payment out of the Plan to the Employer of 50% of the Confederation Life Surplus (defined as such amount or amounts as may be paid to the Plan from time to time of that portion, estimated at $49,317 as at December 31, 1997, of the surplus invested in the Confederation Guaranteed Fund administered by the liquidator of Confederation Life Insurance Company, plus investment earnings thereon to the date of payment less the reasonable expenses associated with its distribution).

   THIS CONSENT SHALL NOT BE EFFECTIVE UNTIL the Employer has satisfied me that 50% of the Confederation Life Surplus has been paid out of the Plan to all members, former members and other persons entitled to payment pursuant to the Surplus Sharing Agreements filed with the Employer's application.

I PROPOSE TO SO CONSENT FOR THE FOLLOWING REASONS:

1. The Employer has initiated a full wind-up of the Plan effective December 31, 1994.
2. There is a surplus in the Plan totalling an estimated $231,065 as at December 31, 1997, of which an estimated $181,748 is invested in the Bonavista Balanced Fund administered by the Royal Trust Corporation of Canada and is available for immediate distribution, and of which an estimated $49,317 is invested in the Confederation Guaranteed Fund administered by the liquidator of Confederation Life Insurance Company and is not available for immediate distribution, but all or part of which may be paid to the

Plan and become available for distribution in future.

3. By written agreements between the Employer and certain members, former members and persons entitled to payments under the Plan ("the entitled persons") on the date of the wind-up (the "Agreement"), the surplus in the Plan available for distribution is to be distributed:
   a) One-half to the credit of the Employer; and
   b) One-half to the credit of the entitled persons.
4. The Employer has applied, pursuant to sections 78 & 79 of the *Act*, for the consent of the Superintendent of Financial Services to the payment of 50% of the Royal Trust Surplus and 50% of the Confederation Life Surplus from the Plan to the Employer.
5. The application appears to comply with section 78 and subsection 79(3) of the *Act* together with subsections 8(1), 28(5), 28(5.1) and 28(6) of Regulation 909 made thereunder.
6. Such further and other reasons that come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served[1] on you, you deliver to the Tribunal a written notice that you require a hearing.

Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, ON
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, March, 2000.

Dina Palozzi
Superintendent of Financial Services

[1] NOTE - PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF The *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the *Act*);

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Pension Plan for Employees of Elgistan Management Limited and Associated Companies. Registration No. 0245886**

TO: Elgistan Management Limited
215 Sydney Street
Cornwall, ON
K6H 3H3

Attention: John K. McBride
President
Applicant and Employer

Notice of Proposal

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the *Act*, consenting to the payment, out of the **Pension Plan for Employees of Elgistan Management Limited and Associate Companies, Registration No. 0245886** (the Plan), to Elgistan Management Limited in the amount of $2,177,568 plus investment earnings minus expenses incurred thereon to the date of payment.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that all benefits, benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Distribution Agreement defined in paragraph 5 below) and any other payments to which the members, former members, and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. Elgistan Management Limited is the employer as defined in the Plan (the "Employer")
2. The Plan was wound up, effective February 28, 1999
3. As at February 28, 1999, the surplus in the Plan was estimated at $2,903,424
4. The Plan provides for payment of surplus to the Employer on the wind-up of the Plan
5. The application discloses that by written agreement made by the Employer, and 100% of the active members and other members (as defined in the application) and 100% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind-up expenses is to be distributed:
   a) 75% to the Employer; and
   b) 25% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 75% of the net surplus in the Plan
7. The application appears to comply with section 78 and subsection 79(3)(a) and (b) of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the Tribunal) pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served[1] on you, you deliver to the Tribunal a written notice that you require a hearing.

Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, ON
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 10th day of March, 2000.

Dina Palozzi
Superintendent of Financial Services

[1] NOTE - PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF The *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the *Act*);

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **McCann-Erikson Advertising of Canada Ltd. Pension Plan. Registration No. 0596783**

TO: MacLaren McCann Canada Inc.
10 Bay Street
Toronto, ON
M5J 2S3

Attention: Erwin W. Buck
Executive Vice-President and
Chief Financial Officer
Applicant and Employer

Notice of Proposal

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the *Act*, consenting to the payment, out of the **McCann-Erikson Advertising of Canada Ltd. Pension Plan, Registration No. 0596783** (the Plan), to MacLaren McCann Canada Inc. in the amount of $3,030,778.00.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that the administrator has paid out all benefits and other payments, including any enhancements arising from the surplus sharing agreement, to which members, former members and any other persons are entitled on the termination of the pension plan.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. **MacLaren McCann Canada Inc.** is the employer as defined in the Plan (the Employer)
2. The Plan was wound up, effective October 31, 1998
3. As at October 31, 1998, the surplus in the Plan was estimated at $4,546,167
4. The Plan provides for payment of surplus to the Employer on the wind-up of the Plan
5. The application discloses that by written agreement made by the Employer, and 100% of the active members and other members (as defined in the application) and 100% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind-up expenses is to be distributed:
   a) 66.6% to the Employer; and
   b) 33.3% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 66.6% of the surplus in the Plan (after adding 66.6% of investment earnings and deducting 66.6% of the expenses related to the wind-up of the Plan.)
7. The application appears to comply with section 78 and subsections 79(3)(a) and 79(3)(b) of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the Tribunal) pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served[1] on you, you deliver to the Tribunal a written notice that you require a hearing.

Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, ON
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 20th day of March, 2000.

Dina Palozzi
Superintendent of Financial Services

[1] NOTE - PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF The *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the *Act*);

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Retirement Plan for the Staff of Gold Fields Canadian Mining Limited. Registration No. 438382**

TO: Peabody Natural Resources Company
701 Market Street
Suite 700
St. Louis, MI
USA 63101-1826

Attention: H. Robert Sanders
Applicant and Employer

Notice of Proposal

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the *Act*, consenting to the payment, out of the **Retirement Plan for the Staff of Gold Fields Canadian Mining Limited, Registration No. 438382** (the Plan), to Peabody Natural Resources Company in the amount of $245,294 as at November 4, 1992, plus investment earnings and after deduction of wind-up expenses.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me all benefits, including any enhancements arising from the surplus sharing agreement, to which active members and former members are entitled on the wind-up of the plan, have been settled.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. Peabody Natural Resources Company is the employer as defined in the Plan.
2. The Plan was wound up, effective November 4, 1992.
3. As at November 4, 1992, the surplus in the Plan was estimated at $490,588.
4. The Plan provides for payment of surplus to the Employer on the wind-up of the Plan.
5. The application discloses that by written agreement made by the Employer, and 68.4% of the active members and other members (as defined in the application) and 100% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind-up expenses is to be distributed:
   a) 50% to the Employer; and
   b) 50% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 50% of the surplus in the Plan (after adding investment earnings).
7. The application appears to comply with section 78 and subsection 79(3)(a) and (b) of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the Tribunal) pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served[1] on you, you deliver to the Tribunal a written notice that you require a hearing.

Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, ON
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 29th day of March, 2000.

Dina Palozzi
Superintendent of Financial Services

[1] NOTE - PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act* R.S.O. 1990, c. P.8, as amended by the F*inancial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an order pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c.P. 8 as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28, respecting the **Retirement Plan for the Employees of Maysfield Property Management (1987) Inc., Registration No. C-103046;**

TO: Superintendent of Financial Services
Financial Services Commission of Ontario
5160 Yonge Street, 17th Floor
North York, ON M2N 6L9

Attention: Larry Falconer
Coordinator, Insolvencies

Administrator of the Retirement Plan for the Employees of
Maysfield Property Management (1987) Inc.

AND TO: Maysfield Property Management (1987) Inc.
1200 Sheppard Avenue East
Lower Level
Willowdale, ON M2K 2K2

Attention: C.A. Ewing
Vice-President

Employer

Notice of Proposal to Make an Order

I PROPOSE TO ORDER that the **Retirement Plan for the Employees of Maysfield Property Management (1987) Inc., Registration No. C-103046**, be wound up in part in respect of Divisions 469 and 830 of Maysfield Property Management (1987) Inc., effective November 30, 1992.

I propose to make this order pursuant to subsection 69(1) of the *Pension Benefits Act*,. R.S.O.1990, c.P 8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S. O. 1997, c. 28 (the "*Act*").

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. There was a cessation or suspension of employer contributions to the pension fund.
2. The employer failed to make contributions to the pension fund as required by the *Act* or the regulations.

YOU are entitled to a hearing by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act*, if, within thirty (30) days after this Notice of Proposal is served upon you, you deliver to the Tribunal a written notice that you require a hearing. Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, ON M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 28th day of April, 2000.

Dina Palozzi
Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act* R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c.P. 8, as amended by the Financial Services Commission of Ontario *Act*, 1997, S.O. 1997, c. 28, respecting the **FBI Brands Ltd. – Les Marques FBI Ltée & Designated Affiliated and Subsidiary Companies Pension Plan, Registration No. 951996.**

TO: Buck Consultants
P.O. Box 15, Suite 1500
95 Wellington Street West
Toronto, ON
M5J 2N7

Attention: Ms. Wafaa Babcock
Consulting Actuary

Administrator of the FBI Brands Ltd. – Les Marques FBI Ltée &
Designated Affiliated and Subsidiary Companies Pension Plan

AND TO: FBI Brands Ltd. –
Les Marques FBI Ltée
Suite 301
6700 Côte de Liesse
Ville St-Laurent, PQ
H4T 2B5

Attention: Mr. Anthony Tondino
Chief Financial Officer

Employer

Notice of Proposal to Make an Order

I PROPOSE TO ORDER that the **FBI Brands Ltd. – Les Marques FBI Ltée & Designated Affiliated and Subsidiary Companies Pension Plan, Registration No. 951996,** be wound up in whole effective October 22, 1998.

I propose to make this order pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended by the *Financial Services Commission of Ontario Act, 1997, S.O. 1997*, c. 28 (the "*Act*").

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. There was a cessation or suspension of employer contributions to the pension fund; and
2. The employer failed to make contributions to the pension fund as required by the *Act* or the regulations.

YOU are entitled to a hearing by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act*, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing. Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, ON
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

THE ADMINISTRATOR IS REQUIRED pursuant to subsection 89(5) of the *Act*, to transmit

a copy of this Notice of Proposal to Make an Order to the following persons:

United Food & Commercial Workers
International Union, Local 175
20 Hamilton Avenue North
Ottawa, ON K1Y 1B6

Attention: Mr. Ray Bromley
Union Representative

Union

KPMG Inc.
P.O. Box 976
Suite 700
21 King St. W.
Hamilton, ON
L8N 3R1

Attention: Mr. Brad Newton
Senior Manager

Receiver and Trustee in Bankruptcy

DATED at Toronto, Ontario this
28th day of April, 2000.

Dina Palozzi
Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act* R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c.P. 8 as amended by the Financial Services Commission of Ontario *Act*, 1997, S.O. 1997, c. 28, respecting the **Retirement Plan for the Employees of Maysfield Property Management (1987) Inc., Registration No. C-103046;**

TO: Superintendent of Financial Services
Financial Services Commission of Ontario
5160 Yonge Street, 17th Floor
North York, ON
M2N 6L9

Attention: Larry Falconer
Coordinator, Insolvencies

Administrator of the Retirement Plan for the Employees of Maysfield Property Management (1987) Inc.

AND TO: Maysfield Property Management (1987) Inc.
1200 Sheppard Avenue East
Lower Level
Willowdale, ON
M2K 2K2

Attention: C.A. Ewing
Vice-President

Employer

Notice of Proposal to Make an Order

I PROPOSE TO ORDER that the **Retirement Plan for the Employees of Maysfield Property Management (1987) Inc., Registration No. C-103046**, be wound up in part in respect of Divisions 469 and 830 of Maysfield Property Management (1987) Inc., effective November 30, 1992.

I propose to make this order pursuant to subsection 69(1) of the *Pension Benefits Act*,. R.S.O.1990, c.P 8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S. O. 1997, c. 28 (the "*Act*").

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. There was a cessation or suspension of employer contributions to the pension fund.
2. The employer failed to make contributions to the pension fund as required by the *Act* or the regulations.

YOU are entitled to a hearing by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act*, if, within thirty (30) days after this Notice of Proposal is served upon you, you deliver to the Tribunal a written notice that you require a hearing. Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, ON M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 28th day of April, 2000.

Dina Palozzi
Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act* R.S.O. 1990, c. P.8, as amended;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended, respecting the **Pension Plan for the Employees of Maysfield Property Management Inc., Registration No. 433961 (previously C-16628)**;

TO: Superintendent of Financial Services

Financial Services
Commission of Ontario

5160 Yonge Street, 17th Floor
Toronto, ON M2N 6L9

Attention: Larry Falconer
Coordinator, Insolvencies

Administrator

AND TO: Maysfield Property Management Inc.

1200 Sheppard Avenue East
Toronto, ON M2K 2R2

Attention: R.L. Strom
President

Employer

Notice of Proposal to Make an Order

I PROPOSE TO ORDER that the **Pension Plan for the Employees of Maysfield Property Management Inc., Registration No. 433961 (previously C-16628)**, be wound up in whole effective December 31, 1987.

I propose to make this order pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended (the "*Act*").

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASON:

1. There was a cessation or suspension of employer contributions to the pension fund.

YOU are entitled to a hearing by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act*, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing. Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, ON M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario this 10th day of May, 2000.

Dina Palozzi
Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act* R.S.O. 1990, c. P. 8, as amended;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended respecting the **Retirement Benefit Plan for the Employees of Norman Wade Company Limited, Techniprint Services Limited and Norman Wade Management Ltd., Registration No. 315176;**

TO: Arthur Andersen Inc.
Toronto Dominion Centre
1900 – 79 Wellington Street West
P.O. Box 29
Toronto, ON M5K 1B9

Attention: Lawrence Contant
Administrator

AND TO: Norman Wade Company Limited,
Techniprint Services Limited and
Norman Wade Management Ltd.
75 Milner Avenue
Scarborough, ON M1S 3R7

Attention: T. A. Ronaldson
Vice-President, Finance and
Corporate Secretary
Employer

Notice of Proposal to Make an Order

I PROPOSE TO ORDER that the **Retirement Benefit Plan for the Employees of Norman Wade Company Limited, Techniprint Services Limited and Norman Wade Management Ltd., Registration No. 315176,** be wound up in whole effective May 1, 1998.

I propose to make this order pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "*Act*").

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. There was a cessation or suspension of employer contributions to the pension fund.
2. A significant number of members of the pension plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.
3. All or a significant portion of the business carried on by the employer at a specific location has been discontinued.

YOU are entitled to a hearing by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act*, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing. Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, ON M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

THE ADMINISTRATOR IS REQUIRED pursuant to subsection 89(5) of the *Act*, to transmit a copy of this Notice of Proposal to Make an Order to the following persons:

PricewaterhouseCoopers Inc.
(formerly Coopers & Lybrand)
145 King Street West
Toronto, ON
M5H 1V8

Attention: Mick Sheehan
Interim Receiver of Norman Wade Company Limited

DATED at Toronto, Ontario, this 26th day of May, 2000.

Dina Palozzi
Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act* R.S.O. 1990, c. P.8, as amended;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended, respecting the **Pension Plan for the Employees of Norman Wade Company Limited and Techniprint Services Limited, Registration No. 957316**;

TO: Imperial Life Assurance Company
Desjardins Laurentian Life
1 Complexe Desjardins
South Tower, 21st Floor
Montreal, PQ
H5B 1E2

Attention: Mary Miniatakos
Customer Service,
Group Pension Dept.

Administrator

AND TO: Norman Wade Company Limited and Techniprint Services Limited
75 Milner Avenue
Scarborough, ON
M1S 3R7

Attention: T.A. Ronaldson
Vice-President, Finance and Corporate Secretary

Employer

Notice of Proposal to Make an Order

I PROPOSE TO ORDER that the **Pension Plan for the Employees of Norman Wade Company Limited and Techniprint Services Limited, Registration No. 957316**, be wound up in whole effective May 1, 1998.

I propose to make this order pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended (the "*Act*").

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. There was a cessation or suspension of employer contributions to the pension fund.
2. A significant number of members of the pension plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.

YOU are entitled to a hearing by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act*, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing. Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, ON
M2N 6L9
Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

THE ADMINISTRATOR IS REQUIRED pursuant to subsection 89(5) of the *Act*, to transmit a copy of this Notice of Proposal to Make an Order to the following persons:

PricewaterhouseCoopers Inc.
(formerly Coopers & Lybrand)
145 King Street West
Toronto, ON M5H 1V8
Attention: Mick Sheehan
Interim Receiver
for Norman Wade
Company Limited

DATED at Toronto, Ontario this 1st day of June, 2000.

Dina Palozzi
Superintendent of Financial Services

Proposed Order and Reasons

Proposed Order:

I PROPOSE TO ORDER the Board of Trustees for the Labourers' Pension Fund of Central and Eastern Canada (the "Board of Trustees"), pursuant to section 88 of the *Act*, to prepare and file a new report under section 14 of Regulation 909, R.R.O. 1990 (the "Regulation") with a valuation date of December 31, 1996 for the Labourers' Pension Fund of Central and Eastern Canada, Registration No. 0573188 (the "Plan"), within sixty (60) days from the date of my Order.

I ALSO PROPOSE TO ORDER the Board of Trustees, pursuant to section 88 of the *Act*, to prepare and file a new report under section 14 of the Regulation with a valuation date of December 31, 1997 for the Plan, within sixty (60) days from the date of my Order.

I ALSO PROPOSE TO ORDER the Board of Trustees, pursuant to section 88 of the *Act*, to prepare the new reports under section 14 of the Regulation for the Plan with valuation dates of December 31, 1996 and December 31, 1997 (collectively, the "New Reports") using the following assumptions or methods:

1. The New Reports shall set out if the Plan has a solvency deficiency and the amount of any solvency deficiency, both as at December 31, 1996 and as at December 31, 1997, in accordance with subsection 14(8) of the Regulation. Subsection 14(8) of the Regulation provides, in part, that:

   Each report under this section shall also set out, on the basis of a solvency valuation or the opinion of the person preparing and certifying the report,

   (a) whether there is a solvency deficiency;

   (b) if there is a solvency deficiency, the amount of the solvency deficiency and the special payments required to liquidate it in accordance with section 5;

   (c) whether the transfer ratio is less than one; and

   (d) if the transfer ratio is less than one, the transfer ratio.

2. The person preparing the New Reports shall determine if the Plan has a solvency deficiency as at December 31, 1996 and as at December 31, 1997 in accordance with subsection 17(1) of the Regulation. Subsection 17(1) of the Regulation provides that:

   To determine the existence of a solvency deficiency for the purposes of a report under section 3, 4, 13 or 14, a valuation shall be performed by the person preparing the report to determine the solvency liabilities of the plan and the solvency assets of the plan.

3. The solvency liabilities of the Plan as at December 31, 1996 and as at December 31, 1997 shall be determined in accordance with subsection 17(2) of the Regulation because the Plan is a multi-employer pension plan established pursuant to one or more collective agreements or a trust agreement, as described in subsection 17(2) of the Regulation. Subsection 17(2) of the Regulation prescribes certain requirements for determining the solvency liabilities of such pension plans, stating:

   In determining the solvency liabilities for a multi-employer pension plan established pursuant to one or more collective agreements or a trust agreement or a pension plan that provides defined benefits where the obligation of an employer to contribute to the pension fund is limited to a fixed amount set out in a collective agreement,

the solvency liabilities shall be determined on the basis of the benefits structure set out in the plan at the date of the valuation without consideration of any provision for the possible reduction of such benefits.

4. Because the Plan is a multi-employer pension plan established pursuant to a collective agreement or a trust agreement, as described in subsection 6(1) of the Regulation, the actuary who prepares the New Reports shall comply with subsection 6(4) of the Regulation in respect of each report. Subsection 6(4) of the Regulation states:

   In the case of a pension plan referred to in subsection (1), the actuary shall, as part of the report required under subsection 3(1) or section 13 or 14,

   (a) perform such tests as will demonstrate the sufficiency of the contributions required by the collective agreement or agreements to provide for the benefits set out in the plan without consideration of any provision for reduction of benefits set out in the plan; or

   (b) where the contributions are not sufficient to provide the benefits under the plan, propose options available to the administrator of the pension plan that will have the result that the required contributions will be sufficient to provide the benefits under the plan.

5. The actuary who prepares the New Reports will only satisfy subsection 6(4)(a) of the Regulation if the contributions required by the collective agreement or agreements are sufficient to provide for the benefits set out in the plan without consideration of any provision for the reduction of benefits set out in the plan and based on a going concern valuation and on a solvency valuation. The solvency valuation must be performed in accordance with subsections 17(1) and 17(2) of the Regulation.

6. The actuary who prepares the New Reports will only satisfy subsection 6(4)(b) of the Regulation if the options proposed thereunder will have the result that the required contributions will be sufficient to provide the benefits under the plan without consideration of any provision for the reduction of benefits set out in the plan and based on a going concern valuation and on a solvency valuation. The solvency valuation must be performed in accordance with subsections 17(1) and 17(2) of the Regulation.

7. The New Reports shall demonstrate that the Plan complies with subsection 55(1) of the *Act*. Subsection 55(1) of the *Act* states:

   A pension plan is not eligible for registration unless it provides for funding sufficient to provide the pension benefits, ancillary benefits and other benefits under the pension plan in accordance with this *Act* and the regulations.

8 The New Reports shall be prepared in accordance with subsection 15(1) of the Regulation which requires that an actuary prepare the reports and certificates referred to in section 14 of the Regulation. "Actuary" is defined in subsection 1(2) of the Regulation as meaning, "a Fellow of the Canadian Institute of Actuaries".

9. The actuary who prepares the New Reports shall comply with section 16 of the Regulation. Section 16 of the Regulation provides, in part, as follows:

   (1) An actuary preparing a report under section 3, 5.3, 13 or 14 of this Regulation or section 70 of the *Act* shall use

assumptions appropriate for the plan and methods consistent with sound principles established by precedent or by common usage within the actuarial profession and with the requirements of the *Act* and this Regulation.

(3) The person preparing a report referred to in subsection (1) or (2) shall certify that it meets the requirements of subsection (1) or (2), as the case may be.

10. The actuary who prepares the New Reports shall use assumptions and methods that are appropriate for a pension plan.

11. The actuary who prepares the New Reports shall prepare each in accordance with generally accepted actuarial principles.

12. The actuary who prepares the New Reports shall prepare each in accordance with the requirements and qualifications of the *Act*, Regulation, and Plan.

I Propose to Make this Order for the Following Reasons

13. Section 14 of the Regulation prescribes the information that is to be included in a report required under section 14 of the Regulation. Subsection 14(8) of the Regulation requires that a report under section 14 of the Regulation set out if the pension plan has a solvency deficiency and the amount of any solvency deficiency, providing, in part, as follows:

    Each report under this section shall also set out, on the basis of a solvency valuation or the opinion of the person preparing and certifying the report,

    (a) whether there is solvency deficiency;

    (b) if there is solvency deficiency, the amount of the solvency deficiency and the special payments required to liquidate it in accordance with section 5;

    (f) whether the transfer ratio is less than one; and

    (g) if the transfer ratio is less than one, the transfer ratio.

14. Section 17 of the Regulation prescribes the criteria for determining if a pension plan has a solvency deficiency for the purpose of a report under section 14 of the Regulation. Subsection 17(1) of the Regulation provides that:

    To determine the existence of a solvency deficiency for the purposes of a report under section 3, 4, 13 or 14, a valuation shall be performed by the person preparing the report to determine the solvency liabilities of the plan and the solvency assets of the plan.

15. The Plan is a multi-employer pension plan established pursuant to one or more collective agreements or a trust agreement, as described in subsection 17(2) of the Regulation. Subsection 17(2) of the Regulation prescribes certain requirements for determining the solvency liabilities of such pension plans, stating:

    In determining the solvency liabilities for a multi-employer pension plan established pursuant to one or more collective agreements or a trust agreement or a pension plan that provides defined benefits where the obligation of an employer to contribute to the pension fund is limited to a fixed amount set out in a collective agreement, the solvency liabilities shall be determined on the basis of the benefits structure set out in the plan as at the date of the valuation without consideration of any provision for the possible reduction of such benefits.

16. The Plan is a multi-employer pension plan established pursuant to a collective agreement or a trust agreement, as described in subsection 6(1) of the Regulation. Subsection 6(4) of the Regulation prescribes additional requirements for reports under section 14 of the Regulation for such pension plans, stating that:

> In the case of a pension plan referred to in subsection (1), the actuary shall, as part of the report required under subsection 3(1) or section 13 or 14,
>
> (a) perform such tests as will demonstrate the sufficiency of the contributions required by the collective agreement or agreements to provide for the benefits set out in the plan without consideration of any provision for reduction of benefits set out in the plan; or
>
> (b) where the contributions are not sufficient to provide the benefits under the plan, propose options available to the administrator of the plan that will have the result that the required contributions will be sufficient to provide the benefits under the plan.

17. To satisfy subsection 6(4)(a) of the Regulation, the actuary who prepares the report under section 14 of the Regulation must perform such tests as will demonstrate the sufficiency of the contributions required by the collective agreement or agreements to provide for the benefits set out in the plan without consideration of any provision for the reduction of benefits set out in the plan and based on a going concern valuation and on a solvency valuation. The solvency valuation shall be performed in accordance with subsections 17(1) and 17(2) of the Regulation.

18. To satisfy subsection 6(4)(b) of the Regulation, the actuary who prepares the report under section 14 of the Regulation must propose options available to the administrator of the plan that will result in the required contributions being sufficient to provide the benefits under the plan without consideration of any provision for the reduction of benefits set out in the plan and based on a going concern valuation and on a solvency valuation. The solvency valuation shall be performed in accordance with subsections 17(1) and 17(2) of the Regulation.

19 Subsection 55(1) of the *Act* requires that all pension plans provide for funding sufficient to provide the pension benefits, ancillary benefits and other benefits under the pension plan in accordance with the *Act* and Regulation, stating that:

> A pension plan is not eligible for registration unless it provides for funding sufficient to provide the pension benefits, ancillary benefits and other benefits under the pension plan in accordance with this *Act* and the regulations.

20. Subsection 16(1) of the Regulation requires that an actuary preparing a report under section 14 of the Regulation use assumptions appropriate for the pension plan and methods consistent with sound principles established by precedent or by common usage within the actuarial profession and with the requirements of the *Act* and the Regulation.

21. Subsection 88(2)(a) of the *Act* provides that the Superintendent may make an order under section 88 of the *Act* where the Superintendent is of the opinion that the assumptions or methods used in the preparation of a report required under the *Act* or

the Regulation in respect of a pension plan are inappropriate for a pension plan.

22. The reports under section 14 of the Regulation with valuation dates of December 31, 1996 and December 31, 1997 for the Plan, prepared by Buck Consultants Limited and filed in June of 1997 and August of 1998, respectively, do not comply with subsections 6(4), 14(8), 16(1), 17(1), and 17(2) of the Regulation and subsection 55(1) of the *Act*. As such, the assumptions and methods used in the preparation of these reports are inappropriate for the Plan, within the meaning of subsection 88(2)(a) of the *Act*.

23. Subsection 88(2)(b) of the *Act* provides that the Superintendent may make an order under section 88 of the *Act* where the Superintendent is of the opinion that the assumptions or methods used in the preparation of the report required under the *Act* or the Regulation in respect of a pension plan do not accord with generally accepted actuarial principles.

24. The reports under section 14 of the Regulation with valuation dates of December 31, 1996 and December 31, 1997 for the Plan, prepared by Buck Consultants Limited and filed in June of 1997 and August of 1998, respectively, do not comply with subsections 6(4), 14(8), 16(1), 17(1), and 17(2) of the Regulation and subsection 55(1) of the *Act*. As such, the assumptions and methods used in the preparation of these reports do not accord with generally accepted actuarial principles, within the meaning of subsection 88(2)(b) of the *Act*.

25. Subsection 88(2)(c) provides that the Superintendent may make an order under section 88 of the *Act* where the Superintendent is of the opinion that a report submitted in respect of a pension plan does not meet the requirements and qualifications of the *Act*, the Regulation or the pension plan.

26. The reports under section 14 of the Regulation with valuation dates of December 31, 1996 and December 31, 1997 for the Plan, prepared by Buck Consultants Limited and filed in June of 1997 and August of 1998, respectively, do not comply with subsections 6(4), 14(8), 16(1), 17(1), and 17(2) of the Regulation and subsection 55(1) of the *Act*. As such, these reports do not meet the requirements and qualifications of the *Act* and the Regulation, within the meaning of subsection 88(2)(c) of the *Act*.

27. Subsection 88(1) of the *Act* provides that the Superintendent may, in the circumstances mentioned in subsection 88(2) of the *Act* and subject to section 89 of the *Act*, by order require an administrator to take the action specified in subsection 88(3) of the *Act*. Subsection 88(3) of the *Act* states:

    An order under this section may include, but is not limited to, requiring the preparation of a new report and specifying the assumptions or methods or both that shall be used in the preparation of the new report.

28. Such further and other grounds as may come to my attention.

Orders that Pension Plans be Wound Up - Section 69 of the *Pension Benefits Act*

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28; (the *Act*)

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting the **Hudson Bay Diecasting Limited Salaried Employees' Retirement Income Plan, Registration No. 380170 (previously C-13417)**, dated the 21st day of January, 2000;

TO: Arthur Andersen Inc.
1200 - 45 St. Clair Avenue West
Toronto, ON
M4V 3A7

Attention: David Kearney
Administrator of the Hudson Bay Diecasting Limited Salaried Employees' Retirement Income Plan

AND TO: Hudson Bay Diecasting Limited
230 Orenda Road
Brampton, ON
L6T 1E9

Attention: Dwight W. Rollins
Chief Financial Officer
Employer

Order

ON or about January 26, 2000, I served a **Notice of Proposal to Make an Order** dated January 21, 2000, pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the *Act*), on the Administrator and on the Employer to wind-up in whole the **Hudson Bay Diecasting Limited Salaried Employees' Retirement Income Plan, Registration No. 380170 (previously C-13417)** (the Plan).

NO Notice requiring a hearing was delivered to the Financial Services Tribunal, (the Tribunal), by the Administrator and/or the Employer within the time prescribed by subsection 89(6) of the *Act*.

IT IS THEREFORE HEREBY ORDERED that the **Hudson Bay Diecasting Limited Salaried Employees' Retirement Income Plan, Registration No. 380170 (previously C-13417)** be wound up in whole, effective September 7, 1995, for the following reasons:

1. There was a cessation or suspension of employer contributions to the pension fund.
2. The employer failed to make contributions to the pension fund as required by this *Act* or the regulations.
3. The employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).
4. A significant number of members of the plan ceased to be employed by the employer as the result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the business of the employer.

PURSUANT TO subsection 69(2) of the *Act*, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

Price Waterhouse Limited
Suite 1100
One Robert Speck Parkway
Mississauga, ON
L4Z 3M3

Attention: Andrew Wilczynski
Senior Vice-President
Trustee in Bankruptcy

A. John Page & Associates Inc.
347 Bay Street
Suite 1203
Toronto, ON
M5H 2R7

Attention: Mr. John Page
Agent of National Bank of Canada

DATED at Toronto, Ontario this 30th day of March, 2000.

K. David Gordon
Director, Pension Plans Branch
by Delegated Authority from

Dina Palozzi
Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28; (the *Act*)

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting the **Retirement Plan for Management Employees of Zettel Metalcraft Ltd., Registration No. 0536912 (formerly C-14794)**, dated the 8th day of February, 2000

TO: Deloitte & Touche Inc.
Suite 1400
BCE Place
181 Bay Street
Toronto, ON
M5J 2V1

Attention: Bruce Bando
Senior Vice-President
Administrator of the Retirement Plan for Management Employees of Zettel Metalcraft Ltd.

AND TO: Zettel Metalcraft
PO Box 70
Aurora Stn. Main
95 Cousins Drive
Aurora, ON
L4G 3H1

Attention: Tim Daly
Controller
Employer

Order

ON the 14th day of February, 2000, I issued a **Notice of Proposal to Make an Order** dated the 8th day of February, 2000, pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the *Act*), to the Administrator and to the Employer to wind-up in whole the **Retirement Plan for Management Employees of Zettel Metalcraft Ltd., Registration No. 0536912 (formerly C-14794)** (the Plan).

NO Notice requiring a hearing was delivered to the Financial Services Tribunal, (the Tribunal), by the Administrator and/or the Employer within the time prescribed by subsection 89(6) of the *Act*.

IT IS THEREFORE HEREBY ORDERED that the Plan be wound up in whole for those members and former members of the Plan who ceased to be employed by the Employer effective between January 1, 1995 and February 6, 1997, for the following reason:

1. A significant number of members of the plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.

PURSUANT TO subsection 69(2) of the *Act*, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

Ernest Leyshon-Hughes
7 Duke Street West
Suite 204
Kitchener, ON
N2H 6M7

Attention: Ernest Leyshon-Hughes
Trustee in Bankruptcy

DATED at Toronto, Ontario this 31st day of March, 2000.

K. David Gordon
Director, Pension Plans Branch
by Delegated Authority from

Dina Palozzi
Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended, respecting the **Pension Plan for the Employees of Norman Wade Company Limited and Techniprint Services Limited, Registration No. 957316**, dated the 1st day of June, 2000;

TO: Imperial Life Assurance Company
Desjardins Laurentian Life
1 Complexe Desjardins
South Tower, 21st Floor
Montreal, PQ H5B 1E2

Attention: Mary Miniatakos
Customer Service, Group
Pension Dept.

Administrator

AND TO: Norman Wade Company Limited
and Techniprint Services Limited
75 Milner Avenue
Scarborough, ON M1S 3R7

Attention: T.A. Ronaldson
Vice-President, Finance and
Corporate Secretary

Employer

Order

ON the 8th day of June, 2000, I issued a **Notice of Proposal to Make an Order** dated the 1st day of June, 2000, pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "*Act*"), to the Administrator and to the Employer to wind-up in whole the **Pension Plan for the Employees of Norman Wade Company Limited and Techniprint Services Limited, Registration No. 957316.**

NO Notice requiring a hearing was delivered to the Financial Services Tribunal, (the "Tribunal"), by the Administrator and/or the Employer within the time prescribed by subsection 89(6) of the *Act*.

IT IS THEREFORE HEREBY ORDERED that the **Pension Plan for the Employees of Norman Wade Company Limited and Techniprint Services Limited, Registration No. 957316** be wound up in whole, effective May 1, 1998, for the following reasons:

1. There was a cessation or suspension of employer contributions to the pension fund.
2. A significant number of members of the pension plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.

PURSUANT TO subsection 69(2) of the *Act*, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

PricewaterhouseCoopers Inc.
(formerly Coopers & Lybrand)
145 King Street West
Toronto, ON M5H 1V8

Attention: Mick Sheehan

Interim Receiver for Norman Wade Company Limited

DATED at North York, Ontario, this 8th day of June, 2000.

K. David Gordon
Director, Pension Plans Branch
by Delegated Authority from

Dina Palozzi
Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8; as amended;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended, respecting the **Pension Plan for the Employees of Mechron Power Systems Inc./Société Générratice Mechron Inc., Registration No. 278051**, dated the 25th day of April, 2000;

TO: The Standard Life
Assurance Company
1245 Sherbrooke Street West
Montreal, Quebec H3G 1G3

Attention: Jean-Claude Lebel, A.S.A.
Actuarial Assistant

Administrator of the Pension Plan for the Employees of Mechron Power Systems Inc./ Société Générratice Mechron Inc.

AND TO: Mechron Power Systems Inc./
Société Générratice Mechron Inc.
2437 Kaladar Avenue
Ottawa, ON K1V 8B9

Attention: Marco Campagna
V.P. Finance

Employer

Order

ON the 2nd day of May, 2000, I issued a **Notice of Proposal to make an Order** dated the 25th day of April, 2000, pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "*Act*"), to the Administrator and to the Employer to wind-up in whole the **Pension Plan for the Employees of Mechron Power Systems Inc./Société Générratice Mechron Inc.. Registration No. 278051.**

NO Notice requiring a hearing was delivered to the Financial Services Tribunal, (the "Tribunal"), by the Administrator and/or the Employer within the time prescribed by subsection 89(6) of the *Act*.

IT IS THEREFORE HEREBY ORDERED that the Pension Plan for the Employees of Mechron Power Systems Inc./Société Générratice Mechron Inc., Registration No. 278051 be wound up in whole, effective October 1, 1997, for the following reason:

1. There was a cessation or suspension of employer contributions to the pension fund.

PURSUANT TO subsection 69(2) of the *Act*, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

KPMG Inc.
45 O'Connor Street, Suite 1000
Ottawa, ON K1P 1A4
Attention: James L. McCaw

Receiver and Manager

DATED at Toronto, Ontario this 22nd day of June, 2000.

K. David Gordon
Director, Pension Plans Branch
by Delegated Authority from

Dina Palozzi
Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8; as amended;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended, respecting **The Revised Pension Plan for the Employees of Forum Sport Inc., Registration No. 0587329**, dated the 25th day of April, 2000;

TO: Clarica (formerly Mutual Life of Canada)
227 King Street South
Waterloo, ON N2J 4C5

Attention: Ms. Donna Belyea
Canadian Customer Business Unit

Administrator of The Revised Pension Plan for the Employees of Forum Sport Inc.

AND TO: Forum Sport Inc.
23 Victoria Road North
Guelph, ON N1E 5G6

Attention: Mr. D.E. Jacket
Plan Administrator

Employer

Order

ON the 2nd day of May, 2000, I issued a Notice of Proposal to make an Order dated the 25th day of April, pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "*Act*"), to the Administrator and to the Employer to wind-up in whole **The Revised Pension Plan for the Employees of Forum Sport Inc., Registration No. 0587329.**

NO Notice requiring a hearing was delivered to the Financial Services Tribunal, (the "Tribunal"), by the Administrator and/or the Employer within the time prescribed by subsection 89(6) of the *Act*.

IT IS THEREFORE HEREBY ORDERED that The Revised Pension Plan for the Employees of Forum Sport Inc., Registration No. 0587329 be wound up in whole, effective December 31, 1994, for the following reasons:

1. There was a cessation or suspension of employer contributions to the pension fund.
2. A significant number of members of the plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.

DATED at Toronto, Ontario this 22nd day of June, 2000.

K. David Gordon
Director, Pension Plans Branch
by Delegated Authority from

Dina Palozzi
Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8; as amended;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended, respecting the **Zettel Metalcraft Ltd. Local 396 CAW Pension Plan, Registration No. 0933515 (previously C-100371)**, dated the 10th day of April, 2000;

TO: Deloitte & Touche Inc.
Suite 1400
BCE Place
181 Bay Street
Toronto, ON M5J 2V1

Attention: Bruce Bando
Senior Vice-President
Administrator of the
Zettel Metalcraft Ltd.
Local 396 CAW Pension Plan

AND TO: Zettel Metalcraft Ltd.
PO Box 70 Aurora Stn Main
95 Cousins Drive
Aurora, ON L4G 3H1

Attention: Tim Daly
Controller
Employer

Order

ON the 11th day of April, 2000, I issued a Notice of Proposal to make an Order dated the 10th day of April, 2000, pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "*Act*"), to the Administrator and to the Employer to wind-up in whole the **Zettel Metalcraft Ltd. Local 396 CAW Pension Plan, Registration No. 0933515 (previously C-100371).**

NO Notice requiring a hearing was delivered to the Financial Services Tribunal, (the "Tribunal"), by the Administrator and/or the Employer within the time prescribed by subsection 89(6) of the *Act*.

IT IS THEREFORE HEREBY ORDERED that the **Zettel Metalcraft Ltd. Local 396 CAW Pension Plan, Registration No. 0933515 (previously C-100371)** be wound up in whole, effective January 24, 1997, for the following reasons:

1. There was a cessation or suspension of employer contributions to the pension fund.
2. A significant number of members of the pension plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.

PURSUANT TO subsection 69(2) of the *Act*, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada) and its Local 396
P.O. Box 112
Aurora, ON L4G 3H1

Union

Ernest Leyshon-Hughes
7 Duke Street West
Suite 204
Kitchener, ON N2H 6M7

Attention: Ernest Leyshon-Hughes
Trustee in Bankruptcy

DATED at Toronto, Ontario this 26th day of June, 2000.

K. David Gordon
Director, Pension Plans Branch
by Delegated Authority from

Dina Palozzi
Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act* R.S.O. 1990, c. P. 8, as amended by the Financial Services Commission of Ontario *Act*, 1997, S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended by the Financial Services Commission of Ontario *Act*, 1997, S.O.1997, c. 28, respecting the **FBI Brands Ltd. – Les Marques FBI Ltée & Designated Affiliated and Subsidiary Companies Pension Plan, Registration No. 951996.**

TO: Buck Consultants
P. O. Box 15, Suite 1500
95 Wellington Street West
Toronto, ON
M5J 2N7

Attention: Ms. Wafaa Babcock
Consulting Actuary

Administrator of the FBI Brands Ltd. – Les Marques FBI Ltée & Designated Affiliated and Subsidiary Companies Pension Plan

AND TO: FBI Brands Ltd. –
Les Marques FBI Ltée
Suite 301
6700 Côte de Liesse
Ville St-Laurent PQ
H4T 2B5

Attention: Mr. Anthony Tondino
Chief Financial Officer

Employer

Order

ON the 3rd day of May, 2000, I issued a **Notice of Proposal to make an Order,** dated the 28th day of April, 2000, pursuant to subsection 69 (1) of the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, (hereinafter both referred to collectively as the "*Act*") to the Administrator and the Employer to wind-up in whole the **FBI Brands Ltd. – Les Marques FBI Ltée & Designated Affiliated and Subsidiary Companies Pension Plan, Registration No. 951996 effective October 22, 1998.**

NO Notice requiring a hearing was delivered to the Financial Services Tribunal, (the "Tribunal"), by the Administrator and/or the Employer within the time prescribed by subsection 89(6) of the *Act*.

IT IS THEREFORE HEREBY ORDERED that the **FBI Brands Ltd. – Les Marques FBI Ltée & Designated Affiliated and Subsidiary Companies Pension Plan, Registration No. 951996** be wound up in whole, effective October 22, 1998, for the following reasons:

1. There was a cessation or suspension of employer contributions to the pension fund; and
2. the employer failed to make contributions to the pension fund as required by the *Act* or the regulations.

PURSUANT TO SUBSECTION 69(2) of the *Act*, the Administrator is required to give notice of this order to the following persons by transmitting a copy thereof:

United Food & Commercial Workers
Union, Local 175
20 Hamilton Avenue
Ottawa, ON
KIY 1B6

Attention: Mr. Ray Bromley
Union Representative

Union

KMPG Inc.
P.O. Box 976
Suite 700
21 King St. W.
Hamilton, ON
L8N 3R1

Attention: Mr. Brad Newton
Senior Manager

Receiver and Trustee in bankruptcy

DATED at Toronto, Ontario this 28th day of June, 2000.

K. David Gordon, Director
Pension Plans Branch
by Delegated Authority from

Dina Palozzi
Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended, respecting the **Pension Plan for the Employees of Maysfield Property Management Inc., Registration No.433961 (previously C-16628)**;

TO: Superintendent of Financial Services
Financial Services
Commission of Ontario
5160 Yonge Street, 17th Floor
North York, ON M2N 6L9

Attention: Larry Falconer
Coordinator, Insolvencies

Administrator

AND TO: Maysfield Property Management Inc.
1200 Sheppard Avenue East
Toronto ON, M2K 2R2

Attention: R. L. Strom
President

Employer

Order

ON the 11th day of May, 2000, I issued a **Notice of Proposal to Make an Order**, dated the 10th day of May, 2000, pursuant to subsection 69 (1) of the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the "*Act*" to the Administrator and the Employer to wind-up in whole the **Pension Plan for the Employees of Maysfield Property Management Inc., Registration No. 433961 (previously C-16628)** effective December 31, 1987.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal, (the "Tribunal"), by the Administrator and/or the Employer within the time prescribed by subsection 89(6) of the *Act*.

IT IS THEREFORE HEREBY ORDERED that the **Pension Plan for the Employees of Maysfield Property Management Inc., Registration No. 433961 (previously C-16628)** be wound up in whole, effective December 31, 1987, for the following reason:

1. There was a cessation or suspension of employer contributions to the pension fund; and the employer failed to make contributions to the pension fund as required by the *Act* or the regulations.

DATED at Toronto, Ontario, this 28th day of June, 2000.

K. David Gordon, Director
Pension Plans Branch

by Delegated Authority from

Dina Palozzi

Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended, respecting the **Retirement Plan for the Employees of Maysfield Property Management (1987) Inc., Registration No. C-103046**, dated the 28th day of April, 2000;

TO: Superintendent of Financial Services
Financial Services Commission of Ontario
5160 Yonge Street, 17th Floor
North York, ON M2N 6L9

Attention: Larry Falconer
Coordinator, Insolvencies

Administrator

AND TO: Maysfield Property Management (1987) Inc.
1200 Sheppard Avenue East
Lower Level
Willowdale, ON M2K 2K2

Attention: C.A. Ewing
Vice-President

Employer

Order

ON the 3rd day of May, 2000, I issued a **Notice of Proposal to Make an Order** dated the 28th day of April, 2000, pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "*Act*"), to the Administrator and to the Employer to wind-up in part the **Retirement Plan for the Employees of Maysfield Property Management (1987) Inc., Registration No. C-103046.**

NO Notice requiring a hearing was delivered to the Financial Services Tribunal, (the "Tribunal"), by the Administrator and/or the Employer within the time prescribed by subsection 89(6) of the *Act*.

IT IS THEREFORE HEREBY ORDERED that the **Retirement Plan for the Employees of Maysfield Property Management (1987) Inc., Registration No. C-103046** be wound up in part in respect of Division 777 of Maysfield Property Management (1987) Inc., effective December 31, 1991 for the following reasons:

1. There was a cessation or suspension of employer contributions to the pension fund.
2. The employer failed to make contributions to the pension fund as required by the *Act* or the regulations.

DATED at Toronto, Ontario this 4th day of July, 2000.

K. David Gordon
Director, Pension Plans Branch
by Delegated Authority from

Dina Palozzi
Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended, respecting the **Retirement Plan for the Employees of Maysfield Property Management (1987) Inc., Registration No. C-103046, dated the 28th day of April, 2000;**

TO: Superintendent of
Financial Services

Financial Services Commission of Ontario

5160 Yonge Street, 17th Floor

North York, ON M2N 6L9

Attention: Larry Falconer
Coordinator, Insolvencies

Administrator

AND TO: Maysfield Property Management (1987) Inc.

1200 Sheppard Avenue East
Lower Level

Willowdale, ON M2K 2K2

Attention: C.A. Ewing
Vice-President

Employer

Order

ON the 3rd day of May, 2000, I issued a **Notice of Proposal to make an Order** dated the 28th day of April, 2000 pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "*Act*"), to the Administrator and to the Employer to wind-up in part the **Retirement Plan for the Employees of Maysfield Property Management (1987) Inc., Registration No. C-103046.**

NO Notice requiring a hearing was delivered to the Financial Services Tribunal, (the "Tribunal"), by the Administrator and/or the Employer within the time prescribed by subsection 89(6) of the *Act*.

IT IS THEREFORE HEREBY ORDERED that the **Retirement Plan for the Employees of Maysfield Property Management (1987) Inc., Registration No. C-103046** be wound up in part in respect of Divisions 469 and 830 of Maysfield Property Management (1987) Inc., effective November 30, 1992, for the following reasons:

1. There was a cessation or suspension of employer contributions to the pension fund.
2. The employer failed to make contributions to the pension fund as required by the *Act* or the regulations.

DATED at Toronto, Ontario this 4th day of July, 2000.

K. David Gordon
Director, Pension Plans Branch
by Delegated Authority from

Dina Palozzi
Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended, respecting the **Retirement Plan for the Employees of Maysfield Property Management (1987) Inc., Registration No. C-103046,** dated the 28th day of April, 2000;

TO:	Superintendent of Financial Services Financial Services Commission of Ontario 5160 Yonge Street, 17th Floor North York, ON M2N 6L9
Attention:	Larry Falconer Coordinator, Insolvencies
	Administrator
AND TO:	Maysfield Property Management (1987) Inc. 1200 Sheppard Avenue East Lower Level Willowdale, ON M2K 2K2
Attention:	C.A. Ewing Vice-President
	Employer

Order

ON the 3rd day of May, 2000, I issued a **Notice of Proposal to Make an Order** dated the 28th day of April, 2000, pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "*Act*"), to the Administrator and to the Employer to wind-up in whole the **Retirement Plan for the Employees of Maysfield Property Management (1987) Inc., Registration No. C-103046.**

NO Notice requiring a hearing was delivered to the Financial Services Tribunal, (the "Tribunal"), by the Administrator and/or the Employer within the time prescribed by subsection 89(6) of the *Act*.

IT IS THEREFORE HEREBY ORDERED that the Retirement Plan for the Employees of Maysfield Property Management (1987) Inc., Registration No. C-103046 be wound up in whole, effective December 31, 1992, for the following reasons:

1. There was a cessation or suspension of employer contributions to the pension fund.
2. The employer failed to make contributions to the pension fund as required by the *Act* or the regulations.

DATED at Toronto, Ontario this 4th day of July, 2000.

K. David Gordon
Director, Pension Plans Branch
by Delegated Authority from

Dina Palozzi
Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended, respecting **A Group Pension Plan for the Employees of The Geo. Cluthé Mfg. Co. Ltd., Registration No. 235069 (formerly C-2490)**

TO: The Equitable Life Insurance Company of Canada
One Westmount Road, North
Waterloo, Ontario
N2J 4C7

Attention: Richard Denomme
Manager, Annuity and Pension Services

Administrator of A Group Pension Plan for the Employees of The Geo. Cluthé Mfg. Co. Ltd.

AND TO: The Geo. Cluthé Mfg. Co. Ltd.
P.O. Box 1635
Waterloo, Ontario
N2J 3Z7

Attention: Graham Poll
Controller

Employer

Cluthé Industries
P.O. Box 1635
Waterloo, Ontario
N2J 3Z7

Attention: Graham Poll
Controller

Employer

Order

ON the 8th day of May, 2000, I issued a **Notice of Proposal to Make an Order** dated the 3rd day of May, 2000, pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended (the "*Act*"), to the Administrator and to the Employer to wind-up in whole **A Group Pension Plan for the Employees of The Geo. Cluthé Mfg. Co. Ltd., Registration No. 235069 (formerly C-2490).**

NO Notice requiring a hearing was delivered to the Financial Services Tribunal (the "Tribunal") by the Administrator and/or the Employer within the time prescribed by subsection 89(6) of the *Act*.

IT IS THEREFORE HEREBY ORDERED that **A Group Pension Plan for the Employees of The Geo. Cluthé Mfg. Co. Ltd., Registration No. 253069 (formerly C02490)** be wound up in whole, effective December 14, 1995, for the following reasons:

1. There was a cessation or suspension of employer contributions to the pension fund on or about December 14, 1995;
2. The employer has failed to make contributions to the pension fund as required by the *Act* and the Regulations thereunder;
3. A significant number of members of the plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer;
4. All or a significant portion of the business carried on by the employer at a specific location has been discontinued.

PURSUANT TO subsection 69(2) of the *Act*, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

Coopers & Lybrand Limited
5 Columbia Street West
Waterloo, Ontario
N2L 5Z5

Attention: Wayne Brohman
Vice-President
Receiver and Trustee
in Bankruptcy

DATED at Toronto, Ontario, this 4th day of July, 2000.

Dina Palozzi
Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8; as amended;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended, respecting the **Retirement Benefit Plan for the Employees of Norman Wade Company Limited, Techniprint Services Limited and Norman Wade Management Ltd., Registration No. 315176**, dated the 26th day of May, 2000;

TO: Arthur Andersen Inc.
Toronto Dominion Centre
1900 – 79 Wellington Street West
P.O. Box 29
Toronto, ON M5K 1B9

Attention: Lawrence Contant
Administrator

AND TO: Norman Wade Company Limited, Techniprint Services Limited and Norman Wade Management Ltd.
75 Milner Avenue
Scarborough, ON M1S 3R7

Attention: T.A Ronaldson
Vice-President, Finance and Corporate Secretary
Employer

Order

ON the 30th day of May, 2000, I issued a **Notice of Proposal to make an Order** dated the 26th day of May, 2000, pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "*Act*"), to the Administrator and to the Employer to wind-up in whole the **Retirement Benefit Plan for the Employees of Norman Wade Company Limited, Techniprint Services Limited and Norman Wade Management Ltd., Registration No. 315176.**

NO Notice requiring a hearing was delivered to the Financial Services Tribunal, (the "Tribunal"), by the Administrator and/or the Employer within the time prescribed by subsection 89(6) of the *Act*.

IT IS THEREFORE HEREBY ORDERED that the **Retirement Benefit Plan for the Employees of Norman Wade Company Limited, Techniprint Services Limited and Norman Wade Management Ltd., Registration No. 315176** be wound up in whole, effective May 1, 1998, for the following reasons:

1. There was a cessation or suspension of employer contributions to the pension fund.
2. A significant number of members of the pension plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.
3. All or a significant portion of the business carried on by the employer at a specific location was discontinued.

PURSUANT TO subsection 69(2) of the *Act*, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

PriceWaterhouse Coopers Inc.
(formerly Coopers & Lybrand)
145 King Street West
Toronto, ON M5H 1V8
Attention: Mick Sheehan
Interim Receiver and Receiver & Manager of Norman Wade Company Limited

DATED at Toronto, Ontario this 20th day of July, 2000.

K. David Gordon
Director, Pension Plans Branch
By Delegated Authority from

Dina Palozzi
Superintendent of Financial Services

Consents to Payments of Surplus out of Wound Up Pension Plans - Subsection 78 (1) of the PBA

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the *Act*);

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to subsection 78(1) of the *Act* consenting to payment out of the **Encyclopaedia Britannica Publications Ltd. And Associated Companies Retirement Pension Plan, Registration No. 0523951**

TO: Encyclopaedia Britannica Inc.
310 South Michigan Avenue
9th Floor
Chicago, IL
USA 60604

Attention: Ms. Andrea Toback
Executive Director of Human Resources
Applicant

Consent

ON or about November 29, 1999, the Superintendent of Financial Services caused to be served on Encyclopaedia Britannica Inc., a **Notice of Proposal** dated November 25, 1999, to consent, pursuant to subsection 78(1) of the *Act*, to payment out of the **Encyclopaedia Britannica publications Ltd. And Associated Companies Retirement Pension Plan, Registration No. 0523951** (the Plan), to Encyclopaedia Britannica Publications Ltd. of 50% of the surplus remaining in the Plan (after adding 50% of the investment earnings on the surplus, to the date of payment and deducting 50% of the expenses relating to the wind-up of the Plan),

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant within the time prescribed by subsection 89(6) of the *Act*.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the **Encyclopaedia Britannica Publications Ltd. And Associated Companies Retirement Pension Plan, Registration No. 0523951**, of 50% of the surplus remaining in the Plan, (after adding 50% of the investment earnings on the surplus, to the date of payment and deducting 50% of the expenses relating to the wind-up of the Plan), to Encyclopaedia Britannica Publications Ltd.

THIS CONSENT IS EFFECTIVE ONLY AFTER the Applicant satisfies me that all benefits, benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Distribution Agreement made by the Applicant on behalf of Encyclopaedia Britannica Publications Ltd. and 91% of members, 80% of deferred former members and 89% of pensioners on the date of wind-up) and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

DATED at Toronto, Ontario this 13th day of January, 2000.

K. David Gordon
Director, Pension Plans Branch
by delegated authority from

Dina Palozzi
Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the *Act*);

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to subsection 78(1) of the *Act* consenting to payment out of the **South Winds Sand & Gravel Limited Pension Trust Plan, Registration No. 415513**

TO: South Winds Sand & Gravel Limited
c/o Mr. Jonathan Townsend
Neal, Pallett & Townsend
Chartered Accountants
289 Dufferin Avenue
London, ON
N6B 1Z1
Applicant and Employer

AND TO: William A. Graham
c/o South Winds Sand & Gravel Limited
100 Enterprise Drive
Unit 14
Komoka, ON
N0L 1R0
Member

Consent

ON or about November 29, 1999, the Superintendent of Financial Services caused to be served on South Winds Sand & Gravel Limited and William A. Graham, by first class mail a **Notice of Proposal** dated November 29, 1999, to consent, pursuant to subsection 78(1) of the *Act*, to payment out of the **South Winds Sand & Gravel Limited Pension Trust Plan, Registration No. 415513** (the Plan), to South Winds Sand & Gravel Limited of the surplus remaining in the Plan. The surplus in the Plan (estimated as of October 31, 1995 to be $81,202) is subject to adjustment for investment earnings to the date of payment less any expenses.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant and Employer or by the Member, within the time prescribed by subsection 89(6) of the *Act*.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the **South Winds Sand & Gravel Limited Pension Trust Plan, Registration No. 415513**, to South Winds Sand & Gravel Limited, of the surplus remaining in the Plan. The surplus in the Plan (estimated as of October 31, 1995, to be $81,202) is subject to adjustment for investment earnings to the date of payment less any expenses.

DATED at Toronto, Ontario this 1st day of February, 2000.

K. David Gordon
Director, Pension Plans Branch
by delegated authority from

Dina Palozzi
Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the *Act*);

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to subsection 78(1) of the *Act* consenting to payment out of the **Pension Plan for the President of the Mining Association of Canada, Registration No. 0692053**

TO: The Mining Association of Canada
1105 – 350 Sparks Street
Ottawa, ON
K1R 7S8

Attention: Ellen Slevin
Director of Administration &
Assistant Treasurer
Applicant and Employer

Consent

ON or about November 29, 1999, the Superintendent of Financial Services caused to be served on The Mining Association of Canada, by first class mail a **Notice of Proposal** dated November 25, 1999 to consent, pursuant to subsection 78(1) of the *Act*, to payment out of the **Pension Plan for The President of The Mining Association of Canada, Registration No. 0692053** (the Plan), to The Mining Association of Canada, of the surplus remaining in the Plan. The surplus in the Plan (estimated as of December 31, 1997, to be $15,515) is subject to adjustment for investment earnings or losses and expenses, to the date of payment.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant and Employer within the time prescribed by subsection 89(6) of the *Act*.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the **Pension Plan for The President of The Mining Association of Canada, Registration No. 0692053**, to The Mining Association of Canada, of the surplus remaining in the Plan. The surplus in the Plan (estimated as of December 31, 1997, to be $15,515) is subject to adjustment for investment earnings or losses and expenses, to the date of payment.

DATED at Toronto, Ontario this 2nd day of February, 2000.

K. David Gordon
Director, Pension Plans Branch
by delegated authority from

Dina Palozzi
Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the *Act*);

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Pension Plan of Brady & Seidner Associates Ltd. for G. Brady, Registration No. 0956631**

TO: Brady & Seidner Associates Ltd. AND George Brady Investments Ltd.
c/o William M. Mercer Limited
BCE Place
161 Bay Street
PO Box 501
Toronto, ON
M5J 2S5

Attention: W.K. Simon
Applicants

Consent

ON or about January 21, 2000, the Superintendent of Financial Services caused to be served on Brady & Seidner Associates Ltd. and George Brady Investments Ltd., by first class registered mail, a **Notice of Proposal** dated January 18, 2000, to consent pursuant to subsection 78(1) of the *Act*, to the payment, out of the **Pension Plan of Brady & Seidner Associates Ltd. for G. Brady, Registration No. 0956631** (the Plan), to BRADY & SEIDNER ASSOCIATES LTD. and GEORGE BRADY INVESTMENTS LTD. (the "Applicants") of the surplus remaining in the Plan. The surplus in the Plan (estimated as of December 31, 1997, to be $194,107) is subject to deduction for expenses associated with the wind-up of the Plan and this surplus application.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicants within the time prescribed by subsection 89(6) of the *Act*.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the **Pension Plan of Brady & Seidner Associates Ltd. for G. Brady, Registration No. 0956631**, to Brady & Seidner Associates Ltd. and George Brady Investments Ltd., of the surplus remaining in the Plan. The surplus in the Plan (estimated as of December 31, 1997, to be $194,107) is subject to deduction for expenses associated with the wind-up of the Plan and this surplus application.

DATED at Toronto, Ontario this 9th day of March, 2000.

K. David Gordon
Director, Pension Plans Branch
by Delegated Authority from

Dina Palozzi
Superintendent of Financial Services

IN THE MATTER OF The *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the *Act*);

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **United States Borax & Chemical Corporation Retirement Plan for Employees In Canada, Registration No. C-8789**

TO: U.S. Borax Inc.
26877 Tourney Road
Valencia, CA
USA 91355-1847

Attention: Marcel Blais
Vice President Human Resources
Applicant

Consent

ON or about January 18, 2000, the Superintendent of Financial Services caused to be served on U.S. Borax Inc. a **Notice of Proposal** dated January 18, 2000, to consent, pursuant to subsection 78(1) of the Act, to the payment of 78% of the net surplus remaining out of the **United States Borax & Chemical Corporation Retirement Plan for Employees In Canada, Registration No. C-8789** (the Plan), to U.S. Borax Inc. The surplus in the plan is estimated to be $137,097 as of January 1, 1999 and is subject to adjustment for investment earnings or losses and expenses, to the date of payment.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the *Act*.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment of 78% of the net surplus remaining out of the **United States Borax & Chemical Corporation Retirement Plan for Employees In Canada, Registration No. C-8789** to U.S. Borax Inc.

THIS CONSENT IS EFFECTIVE ONLY AFTER the Applicant satisfies me that all benefits, including benefits pursuant to the surplus distribution agreement disclosed in the application payable to the members, former members and any other persons entitled to such payments have been paid, or otherwise provided for.

DATED at Toronto, Ontario, this 9th day of March, 2000.

K. David Gordon
Director, Pension Plans Branch
by delegated authority from

Dina Palozzi
Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the *Act*);

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **McCormick, Rankin & Associates Designated Pension Plan, Registration No. 686675**

TO: McCormick, Rankin & Associates Limited
2655 North Sheridan Way
Mississauga, ON
L5K 2P8

Attention: Evelyn J. Gowan
Controller
Applicant

Consent

ON or about January 28, 2000, the Superintendent of Financial Services caused to be served on McCormick, Rankin & Associates Limited a **Notice of Proposal** dated January, 2000 to consent, pursuant to subsection 78(1) of the *Act*, to payment out of the **McCormick, Rankin & Associates Designated Pension Plan, Registration No.686675** (the Plan), to McCormick, Rankin & Associates Limited in the fixed amount of $354,000.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the *Act*.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the **McCormick, Rankin & Associates Designated Pension Plan, Registration No. 686675** of $354,000 to McCormick, Rankin & Associates Limited.

THIS CONSENT IS EFFECTIVE ONLY AFTER the Applicant satisfies me that payment of all benefits to the members as per the surplus sharing agreement has been provided for.

DATED at Toronto, Ontario, this 16th day of March, 2000.

K. David Gordon
Director, Pension Plans Branch
by delegated authority from

Dina Palozzi
Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the *Act*);

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Pension Plan of Scott's Hospitality Inc. for John S. Lacey, Registration No. 0699330**

TO: Laidlaw Inc.
c/o Sedgwick Noble Lowndes
PO Box 439
Toronto Dominion Centre
Toronto, ON
M5K 1M3

Attention: Ms. Sari Sanders
Applicant

Consent

ON or about February 2, 2000, the Superintendent of Financial Services caused to be served on Laidlaw Inc., by first class registered mail a **Notice of Proposal** dated January 31, 2000 to consent, pursuant to subsection 78(1) of the *Act*, to payment out of the **Pension Plan of Scott's Hospitality Inc. For John S. Lacey, Registration No. 0699330** (the Plan), to Laidlaw Inc., of the surplus remaining in the Plan. The surplus in the Plan (estimated as of November 1, 1996 to be $47,767) is subject to deduction for expenses associated with the wind-up of the Plan and this surplus application.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant within the time prescribed by subsection 89(6) of the *Act*.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the **Pension Plan of Scott's Hospitality Inc. For John S. Lacey, Registration No. 0699330**, to Laidlaw Inc., of the surplus remaining in the Plan. The surplus in the Plan (estimated as of November 1, 1996 to be $47,767) is subject to deduction for expenses associated with the wind-up of the Plan and this surplus application.

DATED at Toronto, Ontario, this 23rd day of March, 2000 .

K. David Gordon
Director, Pension Plans Branch
by delegated authority from

Dina Palozzi
Superintendent of Financial Services

IN THE MATTER OF The *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the *Act*);

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the *Act* consenting to a payment out of the Pension Plan for Employees of **Elgistan Management Limited and Associated Companies Registration No. 0245886**

TO: Elgistan Management Limited
215 Sydney Street
Cornwall, ON
K6H 3H3

Attention: John K. McBride
President
Applicant

Consent

ON or about March 14, 2000, the Superintendent of Financial Services caused to be served on Mr. John McBride a **Notice of Proposal** dated March 10, 2000 to consent, pursuant to subsection 78(1) of the *Act*, to payment out of the **Pension Plan for Employees of Elgistan Management Limited and Associated Companies, Registration No. 0245886** (the Plan), to Elgistan Management Limited in the amount of $2,177,568 plus investment earnings minus expenses incurred thereon to the date of payment.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the *Act*.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the **Pension Plan for Employees of Elgistan Management Limited and Associated Companies, Registration No. 0245886**, of $2,177,568 plus investment earnings minus expenses incurred thereon to the date of payment to Elgistan Management Limited.

THIS CONSENT IS EFFECTIVE ONLY AFTER the Applicant satisfies me that all benefits, benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Distribution Agreement) and any other payments to which the members, former members, and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

DATED at Toronto, Ontario, this 20th day of April, 2000.

K. David Gordon
Director, Pension Plans Branch
by delegated authority from

Dina Palozzi
Superintendent of Financial Services

IN THE MATTER OF The *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the *Act*);

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Retirement Plan** for **Eligible Employees of Midland Lumber & Building Supplies Ltd. Registration No. 954990**

TO: Midland Lumber & Building Supplies Ltd.
200 Third Street
PO Box 39
Midland, ON
L4R 4K6

Attention: Mr. Robert F. Bray
President
Applicant

Consent

ON or about March 7, 2000, the Superintendent of Financial Services caused to be served on Midland Lumber & Building Supplies Ltd. a **Notice of Proposal** dated March 6, 2000, to consent, pursuant to subsection 78(1) of the *Act*, to payment out of the **Retirement Plan for Eligible Employees of Midland Lumber & Building Supplies Ltd., Registration No. 954990,** to Midland Lumber & Building Supplies Ltd. as follows:

1. In the amount of 50% of the Royal Trust Surplus (defined as that portion, estimated at $181,748 as at December 31, 1997, of the surplus invested in the Bonavista Balanced Fund administered by the Royal Trust Corporation of Canada, plus investment earnings thereon to the date of payment less the reasonable expenses associated with its distribution).
2. In the amount of 50% of the Confederation Life Surplus (defined as such amount or amounts as may be paid to the Plan from time to time of that portion, estimated at $49,317 as at December 31, 1997, of the surplus invested in the Confederation Guaranteed Fund administered by the liquidator of Confederation Life Insurance Company, plus investment earnings thereon to the date of payment less the reasonable expenses associated with its distribution).

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the *Act*.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the **Retirement Plan for Eligible Employees of Midland Lumber & Building Supplies Ltd., Registration No. 954990,** to Midland Lumber & Building Supplies Ltd. as follows:

1. In the amount of 50% of the Royal Trust Surplus (defined as that portion, estimated at $181,748 as at December 31, 1997, of the surplus invested in the Bonavista Balanced Fund administered by the Royal Trust Corporation of Canada, plus investment earnings thereon to the date of payment less the reasonable expenses associated with its distribution).

   THIS CONSENT IS EFFECTIVE ONLY AFTER the Applicant satisfies me that 50% of the Royal Trust Surplus has been paid out of the Plan to all members, former members and others persons entitled to payment pursuant to the Surplus Sharing Agreements filed with the Applicant's application.
2. In the amount of 50% of the Confederation Life Surplus (defined as such amount or amounts as may be paid to the Plan from

time to time of that portion, estimated at $49,317 as at December 31, 1997, of the surplus invested in the Confederation Guaranteed Fund administered by the liquidator of Confederation Life Insurance Company, plus investment earnings thereon to the date of payment less the reasonable expenses associated with its distribution).

THIS CONSENT IS EFFECTIVE ONLY AFTER the Applicant satisfies me that 50% of the Confederation Life Surplus has been paid out of the Plan to all members, former members and other persons entitled to payment pursuant to the Surplus Sharing Agreements filed with the Applicant's application.

DATED at Toronto, Ontario, this 3rd day of May, 2000.

K. David Gordon
Director, Pension Plans Branch
by delegated authority from

Dina Palozzi
Superintendent of Financial Services

Declaration that the Pension Benefits Guarantee Fund applies to Pension Plans - Subsection 83 (1) of the PBA

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make a Declaration under section 83 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting **The Canada Machinery Corporation Salaried Employees' Pension Plan, Registration Number 0910836 (previously C-14249);**

TO: Ernst & Young Inc.
Ernst & Young Tower
Toronto-Dominion Centre
P.O. Box 251, 222 Bay Street
Toronto, ON M5K 1J7

Attention: Brian Denega,
Senior Vice President

Administrator of The Canada Machinery Corporation Salaried Employees' Pension Plan

AND TO: Canada Machinery Corporation
81 Curlew Drive
North York, ON M3A 2P8

Attention: J. L. Campbell, President

Employer

Declaration

WHEREAS:

1. The Canada Machinery Corporation Salaried Employees' Pension Plan, Registration Number 0910836 (the "Salaried Employees Plan") is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "*Act*"); and
2. The Salaried Employees Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the *Act* or the regulations made thereunder; and
3. The Pension Plan was wound up effective December 31, 1998; and
4. The Superintendent of Pensions appointed Ernst & Young Inc. as the administrator (the "Administrator") of the Pension Plan on February 12, 1992;
5. On January, 2000, I issued a Notice of Proposal to Make a Declaration that the Guarantee Fund applies to the Salaried Employees Plan (the "Notice of Proposal"), dated January, 2000; and
6. No Notice requiring a hearing was delivered to the Financial Services Tribunal (the "Tribunal") within the time prescribed by subsection 89(6) of the *Act*.

NOW THEREFORE TAKE NOTICE that I declare pursuant to sections 83 and 89 of the *Act* that the Guarantee Fund applies to the salaried Employees Plan for the following reasons:

1. The supplementary Wind-Up Report filed by the Administrator indicates an estimate funding deficiency of $294,000.00 as at June 30, 1999, plus interest of 7.5% per annum to the date of payment
2. The Salaried Employees Plan was wound up effective December, 1988.
3. On July 16, 1990, Canada Machinery Corporation was dissolved by Articles of Dissolution.
4. The Administrator has advised that there are no assets are available from the estate of Canada Machinery Corporation for the Salaried Employees Plan.

DATED at Toronto, Ontario, this 9th day of May, 2000.

Dina Palozzi
Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the Financial Services Commission of Ontario *Act*, 1997, S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting the **Pension Plan for Employees of Income Trust Company, Registration Number 0560235;**

TO: Arthur Andersen Inc.
4 King Street West
Suite 1050
Toronto, ON M5H 1B6

Attention: Mr. David Kearney
Administrator

Income Trust Company
181 Main Street West
P.O. Box 870
Hamilton, ON L8P 4S1

Attention: Mr. David Maylor
Director, Trust Administrator

Income Trustco Corporation
181 Main Street West, M.
P.O. Box 870
Hamilton, ON L8P 4S1

Attention: Mr. Bernard Greenbaum
Income Financial Corporation
231 Main Street West
Hamilton, ON L8P 1J4

Attention: Mr. Bernard Greenbaum
Secretary-Treasurer

PricewaterhouseCoopers Inc.
145 King Street West
18th Floor
Toronto, ON M5H 1V8

Attention: Mr. Adam Levy
Liquidator for Income Trust Company

Mintz & Partners Limited
1446 Don Mills Road
Suite 100
Don Mills, ON M3B 3N6

Attention: Mr. Brian Tannenbaum
Trustee in Bankruptcy for Income Trustco Corporation

Declaration

WHEREAS:

1. **The Pension Plan for Employees of Income Trust Company, Registration Number 0560235** (the "Plan") is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "*Act*"); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the *Act* or the regulations made thereunder; and
3. The Superintendent of Pensions issued an Order that the Plan be wound up effective March 6, 1995; and
4. The Superintendent of Pensions appointed Arthur Andersen Inc. as the administrator (the "Administrator") of the Plan on April 12, 1995; and
5. On March 23, 2000, I issued a Notice of Proposal dated March 20, 2000 to make a Declaration that the Guarantee Fund

applies to the Pension Plan; and

6. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89(6) of the *Act*, has been received.

NOW THEREFORE TAKE NOTICE that I declare pursuant to sections 83 and 89 of the *Act*, that the Guarantee Fund applies to the Plan for the following reasons:

1. The funded ratio of the Plan has been estimated to be 81.7%.
2. The employer, Income Trust Company, was placed into liquidation by the Office of the Superintendent of Financial Institutions under the provisions of the *Winding Up Act*.
3. The trustee in bankruptcy for Income Trustco Corporation has advised the Administrator that there are no funds available from the estate of Income Trustco Corporation to make payment to the Plan.
4. The Administrator advised that it is of the opinion that there are reasonable and probable grounds for concluding that the funding requirements of the *Act* and regulation cannot be satisfied.

DATED at North York, Ontario this 19th day of July, 2000.

K. David Gordon
Director, Pension Plans Branch
by Delegated Authority from

Dina Palozzi
Superintendent of Financial Services

Allocations of Money from the Pension Benefits Guarantee Fund - Subsection 34(7) of Regulation 909

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28;

AND IN THE MATTER OF a Declaration by the Superintendent of Financial Services under section 83 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting **The Canada Machinery Corporation Salaried Employees' Pension Plan, Registration Number 0910836 (previously C-14249);**

TO: Ernst & Young Inc.
Ernst & Young Tower
Toronto-Dominion Centre
P.O. Box 251, 222 Bay St.
Toronto, ON M5K 1J7

Attention: Brian Denega
Senior Vice-President

Administrator of The Canada Machinery Corporation Salaried Employees' Pension Plan

Allocation

WHEREAS on May 9th, 2000, I declared, pursuant to section 83 and 89 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "*Act*"), that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to **The Canada Machinery Corporation Salaried Employees' Pension Plan, Registration Number 0910836 (previously C-14249)** (the "Salaried Employees' Pension Plan");

NOW THEREFORE I shall allocate from the Guarantee Fund and pay to the Pension Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the *Act* (the "Regulation"), an amount not to exceed $294,000.00 as of June 30, 1999 plus interest of 7.5% per annum to the date of payment, to provide, together with the Ontario assets, for the benefits determined in accordance with section 34 of the Regulation. Any money allocated from the Guarantee Fund but not required to provide such benefits shall be returned to the Guarantee Fund.

DATED at Toronto, Ontario, this 9th day of May, 2000.

Dina Palozzi
Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services, to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, l c. 28, respecting the **Pension Plan for Employees of Newman Steel Ltd., Local Union No. 8214 (the "Pension Plan") Registration Number 416883;**

TO: KPMG Inc.
Suite 3300, Commerce Court West
P. O. Box 31, Stn Commerce Court
Toronto, ON M5L 1B2

Attention: Ms. Cindy Boates
Administrator of the Pension Plan for Employees of Newman Steel Ltd.
Local Union No. 8214

Allocation

WHEREAS on the 15th day of December, 1994, the Chair of the Pension Commission of Ontario declared, pursuant to sections 83 and 90 of the *Pension Benefits Act*, R.S.O. 1990, c. P. 8 (the "*Act*"), that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the **Pension Plan for the Employees of Newman Steel Ltd., Local Union No. 8214** (the "Pension Plan");

NOW THEREFORE I shall allocate from the Guarantee Fund and pay to the Pension Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the *Act* (the "Regulation"), an amount not to exceed $665,661.00 determined as of August 1st, 2000 to provide, together with the Ontario assets, for the benefits determined in accordance with section 34 of the Regulation. Any money allocated from the Guarantee Fund but not required to provide such benefits shall be returned to the Guarantee Fund.

DATED at North York, Ontario, this 12th day of June, 2000.

K. David Gordon
Director, Pension Plans Branch
by Delegated Authority from

Dina Palozzi
Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S. O. 1997, c. 28, respecting the **Pension Plan for Employees of Income Trust Company, Registration Number 0560235;**

TO: Arthur Andersen Inc.
4 King Street West,
Suite 1050
Toronto, ON M5H 1B6

Attention: Mr. David Kearney
Administrator of the Pension Plan for Employees of Income Trust Company, Registration Number 0560235;

Allocation

WHEREAS in July, 2000, I declared, pursuant to sections 83 and 89 of the *Pension Benefits Act*, R.S.O. 1990, c. P. 8 as amended by the *Financial Services Commission of Ontario Act, 1997*, S. O. 1997, c. 28 (the "*Act*"), that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the **Pension Plan for Employees of Income Trust Company, Registration Number 0560235** (the "Pension Plan");

NOW THEREFORE I shall allocate from the Guarantee Fund and pay to the Pension Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the *Act* (the "Regulation"), an amount not to exceed $460,900.00 to provide, together with the Ontario assets for the benefits determined in accordance with section 34 of the Regulation. Any money allocated from the Guarantee Fund but not required to provide such benefits shall be returned to the Guarantee Fund.

DATED at Toronto, Ontario, this 19th day of July, 2000.

Dina Palozzi
Chief Executive Officer
Superintendent of Financial Services

Tribunal Activities

Appointments of Tribunal Members

Name and Order in Council	Effective Appointment Date	Expiry Date
Milczynski, Martha (Chair)		
O.C. 1665/99	October 6, 1999	July 7, 2001
O.C. 1808/98	July 8, 1998	July 7, 2001
McNairn, Colin (Vice-Chair)		
O.C. 1809/98	July 8, 1998	July 7, 2001
Bush, Kathryn M. (Vice-Chair)		
O.C. 1666/99	October 6, 1997	June 16, 1999
O.C. 1191/99	June 17, 1999	June 16, 2001
O.C. 904/97	May 14, 1997	June 16, 1999
Erlichman, Louis		
O.C. 2527/98	December 9, 1998	December 8, 2001
O.C. 1592/98	June 17, 1998	December 16, 1998
Forbes, William M.		
O.C. 520/98	March 25, 1998	March 24, 2001
Gavin, Heather		
O.C. 11/99	January 13, 1999	January 12, 2002
Greville, M. Elizabeth		
O.C. 222/99	January 27, 1999	January 26, 2002
O.C. 2405/95	February 8, 1996	February 7, 1999
Martin, Joseph P.		
O.C. 1810/98	July 8, 1998	July 7, 2001
Moore, C.S. (Kit)		
O.C. 1591/98	July 1, 1998	June 30, 2001
Robinson, Judy		
O.C. 905/97	May 30, 2000	May 30, 2001*
Stephenson, Joyce Anne		
O.C. 2409/98	November 4, 1998	November 3, 2001
O.C. 1930/95	October 28, 1995	October 27, 1998
Wires, David E.		
O.C. 2166/99	February 26, 2000	February 25, 2003
O.C. 257/97	February 27, 1997	February 26, 2000

* (appointment until either May 30, 2001 or the date FSCO/OSC merger takes effect)

Financial Services Tribunal Decisions with Reasons

(Note: only those FST decisions pertaining to pensions are included in the section)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)

INDEX NO: FST Decision #7 (FST File No. P0013)

PLAN: Pension Plan for Employees of Monsanto Canada Inc., Registration 341230

DATE OF DECISION: April 14, 2000

PUBLISHED: FSCO Bulletin 9/2 and FSCO website

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the *Act*)

AND IN THE MATTER OF a Partial Wind-Up Report submitted by Monsanto Canada Inc. to the Superintendent of Financial Services respecting the Pension Plan for Employees of Monsanto Canada Inc., Registration Number 341230 (the Plan),

AND IN THE MATTER OF a Hearing in accordance with subsection 89(8) of the *Act*;

BETWEEN: **MONSANTO CANADA INC.**
("Monsanto")
Applicant

-and-

SUPERINTENDENT OF FINANCIAL SERVICES
(the "Superintendent")
Respondent

-and-

A GROUP OF CERTAIN FORMER MONSANTO EMPLOYEES and the ASSOCIATION OF CANADIAN PENSION MANAGEMENT
Additional Parties

BEFORE:

Colin H. H. McNairn
Vice Chair of the Tribunal and Chair of the Panel

Louis Erlichman
Member of the Tribunal

C. S. (Kit) Moore
Member of the Tribunal

APPEARANCES:

Freya J. Kristjanson and
Markus F. Kremer,
for Monsanto

Deborah McPhail,
for the Superintendent

Ronald B. Davis and
Mark Zigler,
for A Group of Certain Former
Monsanto Employees

Jeff W. Galway and
Randy V. Bauslaugh,
for The Association of Canadian
Pension Management

HEARING DATE: January 10, 2000

Reasons for Dismissal of Motion

The Background

Monsanto brought a motion, at the commencement of the hearing in this proceeding, for an order disqualifying Mr. M. David R. Brown as an expert witness, prohibiting the Superintendent from calling him as a witness and prohibiting any

party to the proceeding from referring to or relying on Mr. Brown's report dated November 30, 1999. That report was served by the Superintendent on the other parties but was not filed with the Tribunal with the result that the Tribunal is not aware of the contents of the report.

The main proceeding relates to a request for a hearing by Monsanto in connection with a notice of proposal by the Superintendent to refuse to approve a partial wind-up report, relating to the Pension Plan for Employees of Monsanto Canada Inc., filed by Monsanto.

The basis for the motion was that there would be a reasonable apprehension of bias on the part of the Tribunal if it were to entertain evidence from Mr. Brown and that such bias could and should be avoided by the Tribunal refusing to entertain such evidence.

The Tribunal was urged to find that there would be a reasonable apprehension of bias if Mr. Brown were to provide evidence because a reasonable person would be concerned that the Tribunal might not act impartially in weighing the evidence Mr. Brown might present or, to put it another way, that Mr. Brown would be perceived to hold a position of special influence with the Tribunal. The circumstances that, it was argued, would give rise to this concern or perception were as follows;

- during the periods 1977–1983 and 1988–1994, Mr. Brown served as a member of the Pension Commission of Ontario (the "PCO") to which this Tribunal, in its hearing responsibilities in pension matters, could be regarded as successor,
- toward the end of Mr. Brown's most recent term as a member of the PCO, Mr. Kit Moore, who is a member of this Tribunal and of the panel in this proceeding, was also a member of the PCO and sat with Mr. Brown on a number of hearing panels,
- Mr. Brown was a member of the PCO when various policies relating to the wind-up of pension plans and enhancements to pension benefits, including some policies referred to and relied on by the Superintendent in her written submissions in this proceeding, were adopted and published by the PCO, and
- Mr. Brown sat as a panel member on hearings before the PCO relating to pension surpluses where he had to interpret and apply some of those policies.

Analysis and Conclusion

This is clearly not the usual case of a challenge for apprehension of bias. In the usual case, the purpose is to persuade a court or tribunal that a member should be required to stand aside and refrain from serving as an adjudicator in a particular proceeding. When the challenge succeeds, it is because there is some circumstance relating to the member that, when considered in light of any of the aspects of the proceeding, would give rise to a reasonable apprehension that the member would be biased if he or she were to continue as an adjudicator in the proceeding. The leading authority of *Committee for Justice and Liberty v. Canada (National Energy Board)*, [1978] 1 S.C.R. 369, involved just such a situation.

In this case, the purpose of the challenge is to disqualify a potential expert witness not, primarily at least, because of an apprehension that he might be biased, but because of an apprehension that the Tribunal might be biased were it to hear him. As the Alberta Court of Appeal observed in *Re Public Utilities Board* (1985), 21 Admin. L.R. 59, the suggestion that a witness' testimony should be disregarded or disqualified by virtue of such an apprehension

of bias is, indeed, "novel" (at p. 65).

While we recognize that the potential for an apprehension of bias raises important concerns, we are also keenly aware that the consequence of a successful challenge of the kind mounted in this case would be to interfere with the planned presentation by one of the parties, through an expert witness of its choosing, of its case before the Tribunal. There was no suggestion that the prospective evidence of the witness would be irrelevant or otherwise inadmissible or that the witness could not qualify as an expert in pension matters – say, for the purposes of a similar proceeding before another tribunal in which he had no previous role.

In these circumstances, we are reluctant to interfere with the Superintendent's choice of an expert witness. Monsanto must, therefore, bear a heavy burden of proof on this motion. The evidence presented by Monsanto of Mr. Brown's involvement with the PCO and its connection with this proceeding falls short of satisfying that burden. The following factors lead us to that conclusion:

1. Time Lapse

   It has been five and a half years since Mr. Brown was a member of the PCO.

2. Professional Standards

   Mr. Brown is a qualified actuary and as such is subject to a code of professional conduct. Accordingly, a reasonable person would fairly assume that his evidence would be given in accordance with his best professional judgment.

3. Degree of Association with PCO Policies

   Mr. Brown was not shown to have any close personal involvement in the development of the PCO policies relating to the wind-up of pension plans and enhancement of pension benefits that were adopted and published by the PCO while he was a member.

4. Novelty of the Issues in this Proceeding

   The issues in this proceeding are whether surplus must be distributed on the partial wind-up of a pension plan, whether payment of benefit enhancements on a partial wind-up constitutes a distribution of surplus and, in particular, an indirect distribution of surplus to the employer, and whether pensions and deferred pensions may remain in a pension plan upon partial wind-up. There was no evidence presented to indicate that when Mr. Brown was a member of the PCO he participated in any decisions relating to those issues.

5. Overlap with a Member of this Tribunal

   Mr. Brown's term as a member of the PCO overlapped with that of Mr. Moore, who is now a member of this Tribunal and this panel. However, that overlap occurred five and a half years ago, lasted for only two to three months, and resulted in the two of them sitting together on a limited number of applications to the PCO.

   Since Monsanto has failed to satisfy the burden of proof as to a reasonable apprehension of bias on the part of the Tribunal were Mr. Brown to testify, the motion is dismissed.

DATED the 20th day of January, 2000 at the City of Toronto in the Province of Ontario.

Colin H. H. McNairn
Chair of the Panel

Louis Erlichman
Member of the Panel

C. S. (Kit) Moore
Member of the Panel

INDEX NO: FST Decision #11 (FST File No. P0086-1999)

PLAN: Ontario Teacher's Pension Plan, Registration 0345785

DATE OF DECISION: February 9, 2000

PUBLISHED: FSCO Bulletin 9/2 and FSCO website

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended by the *Financial Services Commission of Ontario, 1997*, S.O. 1997, c. 28; (the *Act*)

AND IN THE MATTER OF a decision of the Superintendent Of Financial Services dated October 27, 1999, that a former member of the **Ontario Teachers' Pension Plan, Registration No. 0345785,** Thomas Caster, was not entitled to a transfer of the commuted value of his pension under the terms of the Plan and subsection 42(3) of the PBA;

AND IN THE MATTER OF a Hearing in accordance with subsection 89(8) of the *Act*

BETWEEN: THOMAS CASTER
Applicant

-and-

SUPERINTENDENT OF FINANCIAL SERVICES and
ONTARIO TEACHERS' PENSION PLAN BOARD
Respondents

BEFORE:

Ms. Martha Milczynski, Chair of the Tribunal and the Panel

Ms. Judith Robinson, Member of the Tribunal

Mr. William Forbes, Member of the Tribunal

APPEARANCES:

For the Applicant:
Mr. Alan Redway, Q.C.

For the Superintendent:
Ms. Deborah McPhail

For the Ontario Teachers' Pension Plan Board:
Ms. Anne Slivinskas

HEARING DATE:

January 10, 2000
Toronto, Ontario

Reasons for Decision

Issue and summary

1. On January 19, 2000, the Tribunal dismissed an application brought by the Applicant, Thomas Caster, a member of the Ontario Teachers' Pension Plan (the "Plan"). The issue was whether:

   In the circumstances of this case, and in the event of the Applicant's termination of employment, should the Ontario Teachers' Pension Plan Board (the "Board") be required to transfer an amount equal to the commuted value (CV) of the Applicant's pension pursuant to section 42 of the *Pension Benefits Act?*

2. The Tribunal held that section 42(3) of the *Pension Benefits Act ("PBA")* is clear that the option to transfer the commuted value of an accrued pension on termination is not available to a pension plan member who is eligible to receive immediate payment of a pension benefit unless the terms of the pension plan provides for such an entitlement. Having become eligible

for an immediate pension on June 1, 1998 under section 43(1a) of the Plan and by virtue of section 37(2) of the Plan that expressly excludes a member who is entitled to an immediate pension from entitlement to a transfer of the commuted value of his or her pension, the Applicant does not therefore have the option to transfer his commuted value in the event of the termination of his employment.

Facts

3. Mr. Caster was born on March 2, 1945 and commenced his teaching career and participation in the Plan in 1967. He is currently employed as a teacher and is still a member of the Plan.

4. On April 24, 1998, the Plan announced that an early retirement window would be in effect from June 1, 1998 to December 31, 2002. Effective June 1, 1998, a Plan member whose age and qualifying years of service equalled 85 points would be eligible for the improved early retirement option ("Factor 85") under the Plan. Information regarding Factor 85 was communicated through a "Teachers' Pension Plan Board Bulletin" dated April 24, 1998 and a "Teachers' Pension Plan Board Exchange" dated April 1998. The "Exchange" indicated that Factor 85 affected the ability of an eligible Plan member to take the commuted value of his or her pension:

   ... You can only transfer the commuted value of your pension before you're eligible for an immediate pension. An 85-factor window means you may be eligible to retire with an unreduced pension sooner.

   If you already have your 85-factor and are interested in taking a commuted value transfer, you must resign by May 31, 1998.

5. The Applicant was aware that he would be eligible for Factor 85 on June 1, 1998 and on April 28, 1998 he requested that the Board provide him with an estimate of his termination options as at May 31, 1998.

6. On or about May 6, 1998, the Board provided the Applicant with details of his estimated termination options and advised that once the Factor 85 took effect on June 1, 1998, any member who ceased employment with at least Factor 85 would not be eligible for a commuted value transfer. Mr. Caster also received a brochure entitled "Weighing Your Options", dated April 22, 1998 that indicated:

   To take the CV transfer option, teachers eligible for an 85-factor pension June 1, 1998 must apply by May 31, 1998.

   You must quit and apply for a CV transfer before you're eligible for an 85-Factor pension or age 55. For example, teachers under age 55 who are eligible for an 85-factor pension on June 1, 1998 must terminate employment and apply by May 31, 1998.

7. In his evidence, the Applicant stated that he knew the effect Factor 85 would have on his ability to take the commuted value of his accrued pension if he terminated his employment on or after June 1, 1998. The Applicant also testified that he made his decision not to terminate his employment before June 1, 1998 because:

   (1) He did not want to leave his students prior to the end of the school year on such short notice;

   (2) There was uncertainty as to his eligibility for certain other benefits and payments if he were to terminate and opt for a commuted value transfer - this issue was the subject of grievance arbitration

proceedings which did not involve the Applicant but which could affect his decision; these proceedings had not concluded by June 1, 1998; and

(3) He was concerned with the haste and lack of detailed information surrounding the amendment process.

8. The Tribunal can understand that the Applicant had concerns regarding such a significant decision with which he was faced. However, in considering his request for a transfer of the commuted value of his pension, the Tribunal is bound by the provisions of the PBA, and the terms of the Teachers' Plan.

Pension Benefits Act

9. The relevant provisions of the PBA are:

s. 42 (1) A former member of a pension plan who, on or after the 1st day of January, 1988, terminates employment or ceases to be a member of the pension plan and who is entitled to a deferred pension is entitled to require the administrator to pay an amount equal to the commuted value of the deferred pension,

(a) to the pension fund related to another pension plan, if the administrator of the other pension plan agrees to accept the payment;

(b) into a prescribed retirement savings arrangement; or

(c) for the purchase for the former member of a life annuity that will not commence before the earliest date on which the former member would have been entitled to receive payment of pension benefits under the pension plan.

(3) Subsection (1) does not apply to a former member whose employment is terminated and who is entitled to immediate payment of a pension benefit under the pension plan or under section 41, unless the pension plan provides such an entitlement.

Teachers' Pension Plan

10. Effective June 1, 1998 the relevant provisions of the Plan are as follows:

s. 37 (1) A member entitled to a deferred pension who ceases to be employed in education is entitled to a transfer of the commuted value of the deferred pension to another retirement savings arrangement in accordance with section 42 of the *Pension Benefits Act* and to a refund or transfer of excess contributions, calculated under section 36, subject to the limitations of the *Income Tax Act* (Canada). (Last amended June 1, 1995 - Effective June 1, 1995)

(2) A member who is entitled to an immediate pension is not entitled to a refund or transfer under this section. (Last amended June 1, 1995 - Effective June 1, 1995)

s. 43 (1) A member who has accumulated at least that number of years of qualifying service that, when added to the member's age upon termination of employment in education, totals ninety years is entitled to a retirement pension for the member's lifetime calculated under subsection (4). (Last amended October 10, 1995 - Effective September 1, 1995)

(1a) A member who ceases to be employed in education between June 1, 1998 and December 31, 2002, or during any extension of this period, and who has

accumulated at least that number of years of qualifying service that, when added to the member's age upon termination of employment in education, totals eighty-five years is entitled to a retirement pension for the member's lifetime calculated under subsection (4). (Last amended May 27, 1998 – Effective June 1, 1998)

(2) A member who ceases to be employed in education after the 31st day of May, 1987 and before the 1st day of September, 1990 and who has thirty-five years of qualifying service is entitled to a retirement pension for the member's lifetime calculated under subsection (4). (Last amended October 10, 1995 – Effective September 1, 1995)

(2a) A member who has accumulated thirty-five or more years of credited service is entitled to a retirement pension for the member's lifetime calculated under subsection (4). (Last amended February 20, 1997 – Effective January 1, 1997)

11. As set out above, the Teachers' Plan does not permit a Plan member to elect the transfer of the commuted value of an accrued pension, once the member has become entitled to immediate payment of a pension.

Order

12. While invited by counsel for the Applicant to consider the fairness of the process and the proposition that the Tribunal had equitable jurisdiction by virtue of the parties' right of appeal under s. 91 of PBA and s. 98 of the *Courts of Justice Act*, we find that our jurisdiction as an administrative body established by statute is fully set out in this case under the PBA and the *Financial Services Commission of Ontario Act*. Further and in any event, we find that the provisions governing portability of accrued pensions are clearly reflected in the Plan, which in this case have been administered in accordance with the terms of the Plan and the *PBA*.

13. Accordingly, having become eligible for immediate payment of a pension benefit under the Plan on June 1, 1998, in the event of the Applicant's termination of employment, he will not be entitled to elect the transfer of the commuted value of his pension.

14. The application is dismissed.

DATED at Toronto, this 9th day of February, 2000.

Martha Milczynski
Chair, Financial Services Tribunal

Judith Robinson
Member, Financial Services Tribunal

William Forbes
Member, Financial Services Tribunal

INDEX NO: FST Decision #9 (FST File No. P0063-1999)

PLAN: Ontario Public Service Pension Plan, Registration 208777

DATE OF DECISION: March 27, 2000

PUBLISHED: FSCO Bulletin 9/2 and FSCO website

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the *Act*);

AND IN THE MATTER OF a Complaint by David Horgan relating to the **Ontario Public Service Pension Plan, Registration No. 208777** (the Plan);

AND IN THE MATTER OF a Hearing in accordance with subsection 89(8) of the *Act*.

BETWEEN: DAVID HORGAN

Applicant

-and-

SUPERINTENDENT OF FINANCIAL SERVICES

Respondent

Reasons for Decision

Summary

1. On December 6, 1999, the Financial Services Tribunal allowed the preliminary motion brought by counsel for the Superintendent and dismissed the Applicant's request for a hearing under subsection 89(8) of the *Pension Benefits Act*. Having heard the evidence adduced by the parties at the hearing and having reviewed the Agreed Statement of Facts and heard the parties' submissions, the Tribunal found that the Superintendent of Financial Services ("Superintendent") had not made a decision in respect of the Applicant's complaint and that consequently, the Tribunal did not have jurisdiction to proceed.

Facts

2. On December 17, 1998, while employed as a valuation manager with the Ministry of Finance's Property Assessment Office, the Applicant signed a "Notice of Election" advising that he was retiring from his employment effective December 31, 1998. The Applicant was a member of the Ontario Public Service ("OPS") Pension Plan, and he proceeded to sign the Plan's "Termination of Membership Notice" on December 23, 1998 stating that the reason for his termination was retirement on immediate pension, effective December 31, 1998.
3. Pursuant to a memorandum of understanding between the Ministry of Finance and the Ontario Property Assessment Corporation ("OPAC"), the Ministry of Finance divested its property assessment operations to OPAC. The divestiture was effective at 12:01 a.m. on December 31, 1998.
4. The Applicant accepted an offer of employment with OPAC that had been made on December 15, 1998 and continued his work with OPAC effective December 31, 1998. As part of the terms of the divestiture, the Applicant became a member of the OMERS in respect of future pensionable service.

5. It is the Applicant's position that by his actions, he retired from the Ministry of Finance and is entitled to receive immediate payment of a pension benefit from the OPS Plan. The Plan administrator, the Ontario Pension Board took the position that pursuant to section 80 of the *Pension Benefits Act*, the Applicant's employment was deemed not to have been terminated and that rather than retiring, the Applicant accepted a position with OPAC in conjunction with the Ministry's divestiture. The Board denied the Applicant's claim for payment of a pension benefit by way of letter dated April 9, 1999.
6. On May 12, 1999, the Applicant wrote to the person he thought was the Chair of the Financial Services Commission of Ontario requesting a hearing be scheduled so that the Commission could consider his situation. On May 21, 1999, the Registrar of the Financial Services Tribunal wrote to the Applicant stating:

   > Since it is the responsibility of the Superintendent to consider the issues you have raised and to make a decision on what action to take, by copy of this letter, I have referred your letter to Mr. David Gordon, Director, Pension Plans Branch, so that he can review the matter and advise the Superintendent accordingly.

7. The Applicant also received a letter dated May 27, 1999 from Mr. Gordon stating:

   > I have referred your letter to Mr. John Graham, the Pension Officer responsible for this pension plan, and have asked him to look into the matter. Upon completion of his review, he will be in touch with you.

8. Mr. Graham replied to the Applicant by letter dated July 5, 1999 in which he advised:

   > We have reviewed the response you received from the Plan dated April 9, 1999. Based on our review of the information and documents provided to us, we have no basis on which to conclude that the administrator has failed to comply with the requirements of the *Act* and regulations thereunder, or with the Financial Services Commission of Ontario's Policy. If additional information or documents become available which might demonstrate non-compliance by the administrator, please send them to us and we will be pleased to review them.

9. On August 9, 1999 the Applicant filed his request for a hearing before the Financial Services Tribunal. By letter dated August 31, 1999 counsel for the Superintendent wrote to counsel for the Applicant:

   > It will be our position at the pre-hearing conference that the Financial Services Tribunal does not have jurisdiction to hear your client's complaint, as no decision or refusal to make a decision has been made by the Superintendent. Section 89 of the *Pension Benefits Act* does not provide a right to a hearing in circumstances where the Superintendent has not made a decision or refusal as listed in subsection (1), (2), (3), (3.1), (3.2),(4) or (5). I am enclosing a copy of section 89 for your reference.
   >
   > In this case, the decision was made by John Graham as Pension Officer and not under any delegated authority from the Superintendent. As such, I am suggesting that your hearing request be withdrawn and that your client request the Superintendent to make an order under section 87 of the *Pension Benefits Act*.

10. At the hearing of the preliminary motion on December 6, 1999, the Tribunal heard the evidence of Mr. John Graham, the FSCO Pension Officer with whom the Applicant had contact and also the evidence of the Applicant. We accept Mr. Graham's evidence that he had neither the direct statutory nor delegated authority to make a decision relating to the Applicant's claim for benefits from which an appeal or request for hearing could be brought. There was also no evidence offered to suggest that the Superintendent or anyone with the proper delegated authority of the Superintendent had made a decision regarding the Applicant's claim for payment of a pension.

11. With respect to the Applicant's evidence, the Applicant spoke of what he believed he was being told about his claim for payment of a pension benefit and the correct course of action. The Tribunal can understand the Applicant's frustration of having to deal with complex pieces of legislation like the *Pension Benefits Act* and the *Financial Services Commission of Ontario Act*, and a new and renamed regulator with different powers and organization than its predecessor. However, whatever misunderstanding or misapprehension there was in July, 1999, when the request for a hearing was filed, was cleared up with the advice of counsel for the Superintendent in her letter of August 31, 1999. There was no extreme delay in communicating the correct state of affairs and the appropriate course of action to the Applicant. Consequently, the Tribunal does not find that the PCO decision in *Stanley Dwyer v. Chrysler Canada Ltd. et al.*, PCO, August 19, 1998, XDEC-40 (*"Dwyer"*) has application in this case and distinguishes it on its facts.

12. In any event, the Applicant chose to continue with his request for a hearing to the Tribunal. The Tribunal, however, as a creature of statute has only the powers and jurisdiction given it by the Legislature.

Jurisdiction of the Tribunal

Financial Services Commission of Ontario Act

13. Section 20:

> s.20 The Tribunal has exclusive jurisdiction to,
>
> (a) exercise the powers conferred on it under this *Act* and every other *Act* that confers powers on or assigns duties to it; and
>
> (b) determine all questions of fact or law that arise in any proceeding before it under any *Act* mentioned in clause (a).

Pension Benefits Act

14. Sections 89(1), 89(2), 89(6), 89(8), 89(9)

> s .89 (1) Where the Superintendent proposes to refuse to register a pension plan or an amendment to a pension plan or to revoke a registration, the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the applicant or administrator of the plan.
>
> (2) Where the Superintendent proposes to make or to refuse to make an order in relation to, [*FSCO Act* s. 208(1)]
>
> (a) subsection 42(9) (repayment of money transferred out of pension fund);
>
> (b) subsection 43(5) (repayment of money paid to purchase pension, deferred pension or ancillary benefit);

(c) subsection 80(6) (return of assets transferred to pension fund of successor employer); [*FSCO Act* s.208(2)]

(d) subsection 81(6) (return of assets transferred to new pension fund); [*FSCO Act* s. 208(2)]

(d.1) section 83 (the Guarantee Fund applies to a pension plan). [*FSCO Act* s. 208(2)]

(e) section 87 (administration of pension plan in contravention of *Act* or regulation), or [*FSCO Act* s. 208(3)]

(f) section 88 (preparation of a report). [*FSCO Act* s. 208(3)]

the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the administrator and on any other person to whom the Superintendent proposes to direct the order.

(6) A notice under subsection (1), (2), (3), (3.1), (3.2), (4) or (5) shall state that the person on whom the notice is served is entitled to a hearing by the Tribunal if the person delivers to the Tribunal, within thirty days after service of the notice under that subsection, notice in writing requiring a hearing, and the person may so require such a hearing. [*FSCO Act* s. 208(6)]

(8) Where the person requires a hearing by the Tribunal in accordance with subsection (6), the Tribunal shall appoint a time for and hold the hearing. [*FSCO Act* s. 208(7)]

(9) At or after the hearing, the Tribunal by order may direct the Superintendent to carry out or to refrain from carrying out the proposal and to take such action as the Tribunal considers the Superintendent ought to take in accordance with this *Act* and the regulations, and for such purposes, the Tribunal may substitute its opinion for that of the Superintendent. [*FSCO Act*] s. 208(7)]

Order

15. Accordingly, having found that neither the Superintendent nor anyone with the proper delegated authority made a final decision (to issue a notice of proposal to issue an order or to refuse to issue such notice) regarding the Applicant's claim, the Tribunal is without jurisdiction to proceed with the merits of the Applicant's request for a hearing and the request is hereby dismissed.

DATED at Toronto, this 27th day of March, 2000.

Martha Milczynski
Chair, Financial Services Tribunal

Kit Moore
Member, Financial Services Tribunal

Judith Robinson
Member, Financial Services Tribunal

INDEX NO: FST Decision #10 (FST File No. P0013)

PLAN: Pension Plan for Employees of Monsanto Canada Inc, Registration 341230

DATE OF DECISION: April 14, 2000

PUBLISHED: FSCO Bulletin 9/2 and FSCO website*

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "*Act*")

AND IN THE MATTER OF a Partial Wind-Up Report submitted by Monsanto Canada Inc. to the Superintendent of Financial Services respecting the Pension Plan for Employees of Monsanto Canada Inc., Registration Number 341230 (the "Plan"),

AND IN THE MATTER OF a Hearing in accordance with section 89(8) of the *Act*;

BETWEEN: MONSANTO CANADA INC.
("Monsanto")
Applicant

-and-

SUPERINTENDENT OF FINANCIAL SERVICES
(the "Superintendent")
Respondent

-and-

A GROUP OF CERTAIN TERMINATED MONSANTO EMPLOYEES and the ASSOCIATION OF CANADIAN PENSION MANAGEMENT
Additional Parties

BEFORE:

Colin H. H. McNairn
Vice Chair of the Tribunal and Chair of the Panel

Louis Erlichman
Member of the Tribunal and of the Panel

C. S. (Kit) Moore
Member of the Tribunal and of the Panel

APPEARANCES:

Freya J. Kristjanson and
Markus F. Kremer,
for Monsanto

Deborah McPhail,
for the Superintendent

Ronald B. Davis and
Mark Zigler,
for A Group of Certain Terminated Monsanto Employees

Jeff W. Galway and
Randy V. Bauslaugh,
for The Association of Canadian Pension Management

HEARING DATES:

January 10-12 and February 7-11, 2000

* This decision is under appeal to Ontario Superior Court of Justice Divisional Court.

Reasons for Majority Decision

A. The Background

Monsanto Canada Inc. ("Monsanto") maintained three separate pension plans in respect of its various operations. These plans were consolidated, with effect from January 1, 1996, to form the Pension Plan for Employees of Monsanto Canada Inc. (the "Plan").

As a result of a reorganization of Monsanto, involving a staff reduction program and a plant closure, 146 active members of the Plan (the "Affected Members") received notice that their employment with Monsanto would terminate with their last days of work falling on various dates between December 31, 1996 and December 31, 1998.

Monsanto offered the Affected Members a package of benefits on the termination of their employment, including cash severance and pension improvements for the more senior employees, allowing for early entitlement to enhanced pension benefits. Two separate amendments to the Plan ("Amendment No. 1" and "Amendment No. 2") were filed with the pension regulator to provide the enhanced benefits (the "Benefit Enhancements"). Amendment No. 1, relating to certain members of the Plan affected by the staff reduction, was filed by Monsanto on March 31, 1997 and registered by the pension regulator on August 7, 1997 and, in revised form, on March 18, 1998. Amendment No. 2, relating to certain members of the Plan affected by the plant closure, was filed by Monsanto on June 30, 1997 and ultimately registered by the pension regulator on March 23, 1999. In all, 45 of the146 Affected Members were eligible for the Benefit Enhancements provided by these Amendments.

At all times before July 1, 1998, the pension regulator was the Pension Commission of Ontario (the "PCO") and on and after that date it was the Superintendent of Financial Services appointed under the *Financial Services Commission of Ontario Act, 1997* (the "Superintendent").

On August 11, 1997, following the initial registration of Amendment No. 1 and the filing of Amendment No. 2, Monsanto submitted a report (the "Partial Wind-Up Report") to the pension regulator in respect of the partial wind-up of the Plan as it related to the Affected Members (the "Partial Wind-Up"). The Partial Wind-Up Report provided that the Partial Wind-Up was to be effective May 31, 1997. At the time, the Plan had an actuarial surplus of $14.3 million after the cost of the Benefit Enhancements, estimated at approximately $4.82 million, was taken into account. In a letter to the pension regulator dated April 20, 1998, Towers Perrin, the actuary for the Plan, portrayed the cost of the Benefit Enhancements as funded first from the excess of the pro-rata share of market value of assets over liabilities for the Affected Members and, as to the remaining $1.76 million, "by the use of excess assets under the Plan".

On December 1, 1998, the Superintendent served Monsanto with a notice of proposal to refuse to approve the Partial Wind-Up Report (the "Notice of Proposal"). The reasons for the proposed refusal, as set out in the Notice of Proposal, were that the Partial Wind-Up Report did not meet the requirements of the *Pension Benefits Act* (the "*Act*") and the regulations under the *Act* and did not protect the interests of the

members of the Plan in the following respects;

- it did not provide for the distribution to the Affected Members of surplus assets relating to that part of the Plan being wound up,
- it contemplated the application of surplus to pay for the Benefit Enhancements without going through the process of a surplus withdrawal application although it was effectively paying itself surplus and then redirecting that surplus to certain of the Affected Members, all in order to avoid having to pay them more cash severance,
- in contemplating the use of surplus, in the manner proposed, in order to provide Benefit Enhancements to only 45 of the 146 Affected Members, it disregarded the principles of trust law, which require an equitable and proportionate distribution of surplus,
- it was preceded by a notice of the Partial Wind-Up given to the Affected Members that was deficient for failure to include a statement of the method of distribution of surplus assets and the formula for allocation of any surplus, and it proposed that pensions and deferred pensions payable to Affected Members could remain in the Plan, which is inconsistent with a distribution of those assets in the pension fund relating to the part of the Plan that is being wound up.

On December 31, 1998, Monsanto filed a request for a hearing (the "Request for a Hearing") by this Tribunal in respect of the Notice of Proposal. At a pre-hearing conference convened by the Tribunal, the Association of Canadian Pension Management (the "ACPM") and A Group of Certain Terminated Monsanto Employees, comprising some of the Affected Members (the "Group of Employees"), were added as parties to this proceeding, along with Monsanto and the Superintendent.

B. The Surplus Distribution Issue

The first issue is whether Monsanto is required, in its Partial Wind-Up Report, to allocate a portion of the actuarial surplus in the Plan existing at the Partial Wind-Up Date to the Affected Members and to provide for the distribution of that portion in connection with the Partial Wind-Up. The Report does not contemplate such a distribution, but says that the benefits to which the Affected Members are entitled under the Plan, as at the Partial Wind-Up Date, will be recognized and taken into account for the purpose of determining entitlement, if any, to surplus at the time of full wind-up of the Plan.

The Superintendent's position was that an allocation and distribution of surplus are required on a partial wind-up on the basis of section 70(6) of the *Act*, as read with certain other provisions of the *Act* and Regulation 909 (the "Regulation"). The Superintendent was supported in this by the Group of Employees.

Section 70(6) of the *Act* provides that:

> On the partial wind-up of a pension plan, members, former members and other persons entitled to benefits under the pension plan shall have rights and benefits that are not less than the rights and benefits they would have on a full wind-up of the pension plan on the effective date of the partial wind-up.

In these reasons, we use the word "members" to refer collectively to the members, former members and other persons entitled to benefits under a pension plan.

The first question about section 70(6) that needs to be addressed is whether it ensures minimum rights and benefits on a partial wind-

up simply to the members of the plan who are in the partial wind-up group or to all the members. While a literal reading of the provision would suggest the latter, that is not a sensible interpretation as it would give ongoing members rights that are inconsistent with their continuing membership in the plan, such as an immediate right to transfer their pension entitlements out of the plan without regard to the terms of the plan. Section 70(6) should, therefore, be taken to ensure minimum rights and benefits to those affected by a partial wind-up, and not to others, despite its lack of clarity in this respect.

Monsanto maintained that those members affected by a partial wind-up of a pension plan are afforded a right that is not less than the right they would have in respect of surplus on a full wind-up, as of the partial wind-up date, if they are given the right to participate in any surplus in the event of a full wind-up of the plan. That is what the Partial Wind-Up Report contemplated. The ACPM maintained that section 70(6) cannot be taken to confer any rights at all in respect of surplus for a number of reasons, including the fact that it appears in the part of the *Act* headed "WINDING UP" rather than the part of the *Act* headed "SURPLUS".

The term "partial wind-up", which is used in section 70(6), is defined for the purposes of the *Act* to mean:

> the termination of part of a pension plan and the distribution of the assets of the pension fund related to that part of the pension plan.

It was argued by the Superintendent and the Group of Employees that the term "assets" must include those assets that can be said to represent surplus since the term "surplus" is defined for the purposes of the *Act* to mean:

> the excess of the value of the assets of a pension fund related to a pension plan over the value of the liabilities under the pension plan...

However, the definition of "partial wind-up" does not answer the question of whether any of the assets of a pension fund that might be said to represent surplus are "related to that part of the pension plan" that is being partially wound up. That question is something we have to resolve in deciding this case. The definition does not assist in that decision. In any case, the definition of "partial wind-up" in the *Act* must be read in light of the purpose of a statutory definition, which is to give meaning to the defined term when it is used in the body of the statute rather than to establish independent obligations.

A number of procedural provisions of the *Act* and Regulation were referred to in argument as relevant to a proper understanding of the scope and effect of section 70(6). Given their procedural nature, these provisions cannot control the meaning of the substantive requirements of section 70(6), although they may shed some light on the appropriate scope and effect of that provision. With that possibility in mind, we will now consider those procedural provisions.

Section 70(1) requires the administrator of a pension plan that is to be wound up, in whole or in part, to file a wind-up report that sets out, among other things:

(c) the methods of allocating and distributing the assets of the pension plan and determining the priorities for payment of benefits.

In the context of a full wind-up of a pension plan, this provision clearly relates to the methods of allocating and distributing all the assets of a

pension plan. In the context of a partial wind-up, it cannot be taken to relate to the methods of allocating and distributing all such assets as that would be inconsistent with the continuation of the plan, which a partial wind-up assumes. We interpret the term "assets", as used in this provision, to mean those assets that are in fact proposed, or in law required, to be distributed, whether on a partial or full wind-up of a pension plan. Therefore, the provision does not assist in determining when the law requires a distribution.

Section 72(1) of the *Act* directs the administrator of a pension plan, on a partial or full wind-up, to give members a statement setting out their benefit entitlements, options available and other prescribed information. Section 28(2) of the Regulation, in turn, prescribes the information that is to form part of any such statement, as including;

(q) if there are surplus assets, a statement of the method of distribution and, if applicable, the formula for allocation of any surplus among the plan beneficiaries.

By comparison, the statement that the administrator of a pension plan must give a member of the plan whose membership ceases outside the context of a partial or full wind-up need not say anything about surplus or surplus assets (see s. 28(1) of the *Act* and s. 41(1) of the Regulation).

The requirement of section 28(2)(q) of the Regulation is not determinative of the scope and effect of section 70(6) of the *Act* because it is in a regulation, a form of "subordinate legislation" with limited value in interpreting the parent legislation (see R. Sullivan, *Driedger on the Construction of Statutes*, 3d ed. (Toronto: Butterworths,1994), [at p. 246].

We were also referred to section 29.1(4) of the Regulation, which directs the administrator of a pension plan to give written notice to the Superintendent, within 30 days after final distribution of the assets of a pension plan under section 70 of the *Act*, to the effect that all the assets of the plan have been distributed. Once again, this provision is in a regulation and should, therefore, be given limited weight in the interpretation of the *Act*. Moreover, as in the case of section 70(1)(c), it should logically be interpreted to refer to those assets that are in fact proposed, or in law required, to be distributed, whether on a partial or a full wind-up of a pension plan.

As this discussion demonstrates, the provisions of the *Act* and Regulation relating to full wind ups of pension plans have been extended to cover partial wind ups but do not appear to deal with the inherent differences between the two processes. As a result, there is a lack of precision in the way partial wind ups are dealt with in the *Act* and Regulation.

In the leading case of *Schmidt v. Air Products of Canada Ltd.*, [1994] 2 S.C.R. 211, Mr. Justice Cory, giving the majority judgment of the Supreme Court of Canada, described pension plan surpluses and entitlement to them in the following way:

> An ongoing pension fund is said to have an "existing" or "actuarial" surplus when the estimated value of the assets in the fund exceeds the estimated value of all the liabilities (i.e. pension benefits owed employees) of the fund. When the calculated fund liabilities exceed the calculated fund assets, the plan is said to be in a state of "unfunded liability". Once the plan is wound up, assets and liabilities can be precisely

> determined. The fund will then be in a state of "actual" or "real" surplus or liability. [At p. 624]
>
> Once funds are contributed to the pension plan they are "accrued benefits" of the employees. However, the benefits are of two distinct types. Employees are first entitled to the defined benefits provided under the plan...The other benefit to which the employees may be entitled is the surplus remaining upon termination. This amount is never certain during the continuation of the plan. Rather, the surplus exists only on paper. It results from actuarial calculations and is a function of the assumptions used by the actuary. Employees can claim no entitlement to surplus in an ongoing plan because it is not definite. The right to surplus is crystallized only when the surplus becomes ascertainable upon termination of the plan. Therefore, the taking of a contribution holiday [by the employer does not represent] a reduction of accrued benefits. [At p. 654]

We interpret the second paragraph to mean that a member's interest in the surplus of a pension plan is simply a form of benefit that remains contingent while the plan is ongoing. That benefit consists of an entitlement to participate in a distribution of any actual surplus remaining upon final wind-up of the plan. Upon such wind-up, the benefit crystallizes into a right to participate in a distribution of any such surplus.

The Superintendent argued that the rights of those affected by a partial wind-up are equivalent to the rights they would have on a full wind-up, as at the partial wind-up date, only if there is a crystallization of their right to surplus, in the sense of the *Air Products* decision, by virtue of the partial wind-up. However, the right that crystallizes on the full wind-up of a pension plan is a right to participate in any surplus remaining upon the final distribution of all the assets of the plan. Therefore, if section 70(6) of the *Act* gives those affected by a partial wind-up that right, it does not follow that they would be entitled to participate in a distribution of the surplus in the plan at the partial wind-up date. In our view, the most they would have is a right to participate in a distribution of actual surplus on a full wind-up on the basis of their membership in the plan at the partial wind-up date without disqualification because they have ceased to be members of the plan before the full wind-up. If they have that right, they are better off than they would otherwise be. But for section 70(6), they would stand to lose their entitlement to participate in a distribution of actual surplus on a full wind-up at such time as they ceased to be members of the plan.

If the *Act* were to be read as requiring a distribution of surplus on the partial wind-up of a pension plan to members of the partial wind-up group, the result could be unfair to the ongoing members of the plan. They would only have a potential right to participate in the distribution of any remaining part of the undistributed surplus if and when the plan were to be ultimately wound up in full (or, as to them, in part) while they were still members of the plan. By comparison, those affected by the partial wind-up would have an immediate right to participate in the distribution of a determinate amount of surplus. If the *Act* were to require, in clear terms, that such a distinction is to be made between the surplus rights of the two groups of members, that distinction would have to be respected. But that is not the case.

Consequently, the potential unfairness to the ongoing members of requiring a distribution of some of the surplus on a partial wind-up provides an additional reason for avoiding an interpretation of section 70(6) that would produce that result.

Given the very general language of section 70(6) of the *Act*, which does not refer to surplus rights specifically, we do not think that the *Act* can be taken to require an allocation and distribution of some portion of the surplus of a pension plan on a partial wind-up.

If the effect of a partial wind-up were to divide a pension plan and the assets in the related pension fund into two parts – one part in respect of liabilities for members of the partial wind up group and the other part in respect of the liabilities for the remaining members of the plan – then an accompanying division of surplus between those parts would be a logical consequence. On such a division of assets, liabilities and surplus, each part would, effectively, represent a separate plan. The surplus in the first plan (that for the members of the partial wind-up group) would then be subject to distribution as that plan would terminate and the members would have a crystallized right, in the sense of the *Air Products* decision, to the surplus in the plan. This is so because the plan would be subject to liquidation, in which event its assets and liabilities could be precisely determined and the actual surplus ascertained. The Group of Employees argued that this was the result of a partial wind-up under the *Act*. There is nothing in the *Act*, however, that suggests that a pension plan and the related pension fund are divided into two on a partial wind-up. Various provisions of the *Act* that appear under the heading "WINDING UP" (ss. 68–77) use the expression "**the** pension plan" or "**the** pension fund" (emphasis added) to refer to a plan that is being wound up in whole or in part or to the related pension fund. There is no indication that, from the effective date of a partial wind-up, there is more than one plan or fund.

The Group of Employees also maintained, in the alternative, that a partial wind-up causes a termination of any trust for the members of the partial wind-up group, in which case they are entitled to call for a distribution of those assets that are held in trust for them, including surplus assets. This argument also presupposes a division and termination on a partial wind-up – specifically, a division of any trust for the members of the plan and a termination of one of the successor trusts, namely that for the members of the partial wind-up group. But, once again, the *Act* does not contemplate such a result on a partial wind-up. And under trust law principles, a trust generally continues until its terms or objects have been carried out or until all the beneficiaries have agreed to modify or terminate the trust; the beneficiaries may require the trustee to transfer the trust property to them only in the event of unanimous agreement to termination (see D.W.M. Waters, *Law of Trusts in Canada*, 2d ed. (Toronto: Carswell, 1994), at pp. 961–964). In a pension plan context, the beneficiaries would include all the members of the plan and may include the employer with respect to some or all of the surplus assets.

In conclusion, the Partial Wind-Up Report filed by Monsanto was not deficient for failing to provide for an allocation and distribution of some portion of the surplus in the Plan. Whether it would have been deficient had it made no provision for the participation of the Affected

Members in any actual surplus on a full wind-up is not a question that is before us since the Partial Wind-Up Report did make such provision. If such provision is necessary, which we think is the better view, there may be some practical difficulties in contacting those affected by a previous partial wind-up on a full wind-up and in determining their precise entitlements in that event, as noted in Mr. Erlichman's dissenting reasons. Those difficulties could be addressed by amendments to the *Act* or Regulation.

Monsanto argued that there would be serious negative consequences for the pension system if this Tribunal were to support the position adopted by the Superintendent on the surplus distribution issue. Monsanto's actuarial expert testified as to these consequences. The Superintendent's actuarial expert offered a different opinion about the consequences for the pension system. In light of the conclusion we have arrived at, we do not find it necessary to decide between any conflicting aspects of the actuarial experts' evidence.

The Superintendent, in her Notice of Proposal, also put her proposed refusal to approve the Partial Wind-Up Report on the basis of a failure by Monsanto to comply with section 28(2)(q) of the Regulation (set out above) in giving its notice of partial wind-up. We are of the opinion that any deficiency in that respect was effectively remedied by the notice of this hearing, which referred specifically to the surplus distribution issue.

C. The Benefit Enhancements Issue

The benefit enhancements issue can be broken down into two sub-issues. The first is whether the Benefit Enhancements amount to a payment out of the surplus of the Plan to Monsanto subject to the preconditions of the *Act* and Regulation to the making of any such payment to an employer. The second is whether the Benefit Enhancements failed to meet the requirements of the *Act* or the common law for lack of a proportionate and equitable basis of entitlement.

1. Do the Benefit Enhancements Involve a Payment of Surplus to Monsanto subject to Preconditions under the *Act* and Regulation that were not Satisfied in this Case?

The Superintendent argued that the Benefit Enhancements provided "as part of the partial wind-up package" were funded in part by surplus to which the Affected Members had a crystallized right by virtue of the partial wind-up. She then maintained that Monsanto was the real beneficiary of the Benefit Enhancements because they enabled it to avoid paying a substantial portion of the severance that would otherwise have been payable to the older Affected Members, who qualified to receive the Benefit Enhancements. In her view, the Benefit Enhancements, therefore, amounted to a payment of surplus to Monsanto, which was not permitted by the *Act* unless Monsanto satisfied certain preconditions. In particular, it would have had to go through the surplus withdrawal procedures under the *Act* and Regulation (see s. 79(3) of the *Act* and s. 8 of the Regulation), which it had not done. The position of the Superintendent on this issue was built on her position on the surplus distribution issue – that the Affected Members had a right to participate in a distribution of surplus on the Partial Wind-Up – which is a proposition that we have rejected in Part B of these Reasons.

The Superintendent's position also turned on an underlying distinction between an enhancement of benefits under a pension plan in association with a partial wind-up and a similar

enhancement of benefits at any other time. The Superintendent conceded that Monsanto would be free to provide benefit enhancements from an ongoing plan at other times so long as there was an actuarial surplus in the Plan sufficient to cover the actuarial costs of those benefits or so long as any resulting actuarial deficiency in the Plan were to be made up.

What makes the situation any different when the benefit enhancements are associated with a partial wind-up? The Superintendent's response to this question was that the members of a partial wind-up group have an immediate crystallized right to surplus on a partial wind-up and that benefit enhancements provided shortly before a partial or full wind-up, if funded out of plan surplus, are normally considered by the Superintendent to be part of any surplus distribution proposal, if that is in the best interests of the members, in accordance with FSCO Policy No. S900-900. That policy does not apply here in a direct way, however, because there was no surplus distribution proposal, although the Superintendent argued that there should have been one. In any case, as an administrative policy, it does not have the binding force of law but would simply be persuasive in the event of any doubt about the meaning of the *Act* (see R. Sullivan, *Driedger on the Construction of Statutes*, 3d ed. (Toronto: Butterworths,1994), at p. 471).

There is no apparent basis in the *Act* or Regulation to support the alleged difference in the treatment of benefit enhancements on a partial wind-up and at other times. While the *Act* regulates plan amendments (see ss. 12–14 & 17–18), it imposes no requirements with respect to the funding of benefit enhancements effected by such an amendment where the plan assets are sufficient to cover the additional liabilities created by the amendment. In the present case, the amendments to the Plan introducing the Benefit Enhancements were duly filed by Monsanto and registered by the Superintendent. Such registration would normally result in an immediate increase of the liabilities of the Plan, to cover the actuarial cost of the Benefit Enhancements (see para. 2.05 of the Standard of Practice for Valuation of Pension Plans of the Canadian Institute of Actuaries (January, 1994)) and a corresponding reduction in the actuarial surplus of the Plan.

If the Benefit Enhancements did not lead to an automatic reduction in surplus, but instead were to be treated as a *de facto* payment of surplus to Monsanto, Monsanto would be unable to fund those Benefit Enhancements without first making a successful surplus withdrawal application or contributing a sufficient amount to the Plan to cover the actuarial cost of the Benefit Enhancements. The former course of action would be problematic for Monsanto because of the requirement of consent from at least two-thirds of the members (see s. 8 of the Regulation). The latter course of action would not be feasible as the Plan was in an "excess surplus" position. The term "excess surplus" is commonly used to refer to the level of funding of a pension plan, in relation to plan liabilities, that would preclude the employer from making an "eligible contribution" to the plan under the *Income Tax Act* (Canada) (see s. 147.2 of the *Income Tax Act* and ss. 8501 & 8502 of the *Income Tax Regulations*). If an employer were to make a contribution to a pension plan that was not an "eligible contribution", the registration of the plan under the *Income Tax Act* would be put in jeopardy. Therefore, there are practical reasons, as demonstrated by this case, for resisting the conclusion that benefit

enhancements are to be treated differently when they are introduced in association with a partial wind-up of a pension plan.

Recognizing the practical dilemma, the Superintendent modified or clarified her position in oral argument, suggesting that Monsanto could have funded the Benefit Enhancements from the "excess surplus" in the Plan without the need for a surplus withdrawal application, although the Notice of Proposal that led to Monsanto's Request for a Hearing by this Tribunal is not consistent with that solution. However, the concept of "excess surplus" does not have any particular significance under the *Act*. While we received evidence of the existence of "excess surplus" in the Plan, we received no evidence as to the actual amount of that surplus. The "excess surplus" to which the Superintendent said Monsanto could resort was, apparently, the amount of such surplus remaining in the Plan after the distribution of a portion of surplus to the members of the Partial Wind-Up Group, in accordance with the Superintendent's position on the surplus distribution issue (for which, see Part B above).

While the Superintendent's ultimate position **may** remove any substantive objection to the introduction of the Benefit Enhancements, we are of the opinion that, in any event, those Enhancements did not involve a payment of surplus to Monsanto that would have required a surplus withdrawal application should the Enhancements have been incapable of being funded from "excess surplus". Monsanto did not actually receive any payment out of surplus and any indirect benefit that it gained from the Benefit Enhancements is speculative at best. The utilization of surplus as a source of funding for benefit enhancements does not normally require a surplus withdrawal application. The only compelling basis for departing from that norm in this case would be if the surplus that was utilized was set aside, or was shortly to be set aside, for distribution to the Affected Members on the Partial Wind-Up, which we do not accept as being the consequence of a partial wind-up under the *Act* (see Part B above).

2. Did the Benefit Enhancements Fail to meet the Requirements of the *Act* or the Common Law for Lack of a Proportionate and Equitable Basis of Entitlement?

The Superintendent argued that as the Benefit Enhancements were funded from surplus on the occasion of a partial wind-up, they should have been provided proportionately and equitably. They were not provided in that fashion, it was said, first, because only a limited number of the Affected Members received the Benefit Enhancements and, second, because the surplus that funded those Enhancements included some of the actuarial surplus in which the members of the ongoing Plan had an interest. The second reason falls away if all of the funding can be said to come from a single source – the undifferentiated actuarial surplus of the Plan. We have already concluded that the *Act* does not contemplate a division of surplus on a partial wind-up between the partial wind-up group and the remaining plan members. Therefore, we consider the Benefit Enhancements to have been funded from a single source, namely the undifferentiated surplus of the Plan.

The Superintendent relied, once again, on FSCO Policy No. S900-900, which provides that benefit enhancements introduced shortly before a partial wind-up and funded from plan surplus will normally be considered a distribution of surplus when that is in the best interests of the

members of the plan. She then argued that there is a clear intention in the *Act* that surplus be distributed proportionately, as evidenced by section 79(4), which says that a pension plan that is silent as to the payment of surplus shall be construed as requiring that surplus accrued after December 31, 1986 be distributed proportionately to plan members on a wind-up. Neither of these provisions is directly applicable in this case, the first because it relates to a surplus distribution proposal, which is not in issue here, and the second because there was no evidence as to what the Plan provides, if anything, with respect to the payment of surplus on a wind-up. At most, these provisions might be taken to establish principles that could have some relevance by analogy to the facts of this case.

When benefit enhancements are provided outside the context of a wind-up, there is no requirement in the *Act* or at common law that they be proportionate as among the members of the plan. This proposition is supported by the decisions of the Ontario Court General Division in *Anova Inc. Employee Retirement Pension Plan (Administrator of) v. Manufacturers Life Insurance Co.* (1994), 121 D.L.R. (4th) 162 (see p. 180), and *Mair v. Stelco Inc.* (1995), 9 C.C.P.B. 140 (see p. 148). Indeed, the Superintendent acknowledged, in oral argument, that if the Benefit Enhancements in this case had been funded from "excess surplus" in the ongoing Plan, they would not have to be proportionate. In our view, the Benefit Enhancements are funded from the undifferentiated surplus of the Plan and, therefore, do not attract any special requirement of proportionality simply because they are associated with a partial wind-up. It was not seriously argued that the Benefit Enhancements were inequitable apart from their lack of proportionality.

D. Transfer of Pensions Issue

The third issue is whether Monsanto is required to transfer out of the Plan, whether by annuity or otherwise, the assets necessary to fund pensions and deferred pensions payable to the Affected Members. In fact, Monsanto gave those members the option of leaving their pension entitlements in the Plan, as well as the various options of transferring the commuted values of their deferred pensions out of the Plan that are set out in section 42(1) of the *Act* (see also ss. 73(2) & 74(8) of the *Act*). Two-thirds of those members took up the first option. None of the other members has apparently objected to that option being made available.

The Superintendent argued that the option to leave pension entitlements in the Plan was inconsistent with the *Act* since the *Act* contemplates the distribution of the assets relating to that part of a pension plan that is to be partially wound up. Support for this was found in the definition of "partial wind-up" (in s. 1 of the *Act*), the requirement that a wind-up report set out "the methods of allocating and distributing the assets of the pension plan" (in s. 70(1)(c) of the *Act*), and the requirement that pension plan documents set out "the method of allocation of the assets of the pension plan on wind-up" (in para. 13 of s.10(1) of the *Act*).

We have already dealt with the significance of the first two of these provisions in Part B above. We indicated that the *Act's* definition of "partial wind-up" should not, by itself, determine the effect of the operative requirements of the *Act*. We also concluded that the "methods of allocating and distributing the assets of a pension plan" should be taken to refer to the assets that are in fact proposed, or in law required, to be

distributed on a partial or a full wind-up. We note that "the method of allocation of the assets" that must be included in plan documents is in relation to a "wind-up" of a pension plan, and not in relation to a wind-up "in whole or in part" of a pension plan. The latter expression is used elsewhere in the *Act* in reference to a wind-up to indicate that both forms of wind-up are meant to be covered (see ss. 68(1), 69(1), 70(1), 71(1), 72(1), 73(1), 74(1), (5) & (8), 75(1) & 77).

Monsanto argued that since the *Act* requires the administrator of a pension plan to give a member of a plan affected by a partial wind-up certain transfer options on the partial wind-up (in accordance with ss. 42(1), 73(2) & 74(8) of the *Act*), but is silent on leaving pension entitlements in the plan, the latter option can be made available to the members of the partial wind-up group. Monsanto also maintained that if that option were not open to such a member, there would be potential adverse consequences for both the employer and the members of the partial wind-up group. The employer could be faced with higher costs for providing the promised benefits because it would have to go into the market and purchase annuities on a "retail basis" and any additional costs would reduce the surplus in the ongoing plan. The members of the partial wind-up group, for their part, would forego the opportunity to participate in any future *ad hoc* increases in benefits under the pension plan. The Superintendent responded to these concerns by saying that they were, at best, arguments for a change in the law, which was not for the Tribunal to make, and that they could be addressed by an employer setting up a new pension plan for those members of a partial wind-up group who wanted to leave their pension entitlements in a comparable plan.

There is no provision in the *Act* dealing specifically with the question of whether the members of a partial wind-up group can be given the option of leaving their pension entitlements in the plan, as they clearly could if they had terminated their employment outside the context of a wind-up. We do not think that the *Act* implicitly precludes this option. Accordingly, we conclude that Monsanto was free to give the Affected Employees the option of leaving their pension entitlements in the Plan. We take some comfort in the fact that this is a practical result for all concerned.

E. The Legitimate Expectations Issue

The final issue is whether Monsanto had a legitimate expectation that the Superintendent would approve the Partial Wind-Up Report in light of the past practice or policy of the pension regulator in respect of similar reports with the result that the Tribunal should direct the Superintendent to approve the Partial Wind-Up Report. Put another way, the issue is whether the Superintendent was stopped from disapproving the Partial Wind-Up Report on the grounds that Monsanto had relied on the past practice or policy of the pension regulator, with the result that the Tribunal should direct the Superintendent to approve the Partial Wind-Up Report.

1. The Relevant Practice and Policy of the Superintendent

(a) On the Distribution of Surplus

During the period from November 1992 to November 1998, 156 partial wind-up reports were filed with the pension regulator (the Superintendent or her predecessor, the PCO) in respect of plans that were in a surplus position,

but where there was no proposal for the distribution of such surplus. The pension regulator neither approved nor refused to approve these reports. Section 70(2) of the *Act* provides that no payment shall be made out of a pension fund where notice of proposal to wind-up the related plan has been given, until the Superintendent has approved the wind-up report. However, this does not prevent the making of any payment out of the fund where such payment is approved by the Superintendent pursuant to section 70(3) of the *Act*. Prior to the present case, the pension regulator had never issued a notice of proposal to refuse to approve a partial wind report on the basis that surplus was not being distributed.

In a published guideline that was subsequently adopted by the Superintendent and in published clarifications of that guideline, the PCO disclosed its policy with respect to proposals for the treatment of surplus in wind-up reports. Compliance Assistance Guideline No. 4 (FSCO Policy No. W100-100) states that in a wind-up report the administrator of a pension plan "shall disclose intentions with respect to the proposed handling of surplus" (at p. 4). In a question and answer section in the PCO Bulletin of July, 1991 (vol. 2, issue 2), the latter statement, as it appeared in the version of the Guideline then in force, was clarified by the PCO as meaning that administrators are not required to state how surplus will be allocated and dealt with at the time of the report if they do not wish to deal with the issue at that time, adding that "a statement to this effect in the wind-up report is sufficient to consider the question 'handled'" (at p. 11). This position was further clarified in the PCO Bulletin of November, 1991 (vol. 2, issue 3) by reiterating that the administrator could simply state in a wind-up report that surplus was not being dealt with at that time, but adding that the PCO **does** expect the administrator to identify the existence of the surplus and to state what its intention is. These two clarifications are reproduced in FSCO Policy No. W100-125. Monsanto's Partial Wind-Up Report appears to comply with the policy set out in this Guideline, as clarified by the PCO.

The PCO published a further policy on "Partial Wind-Up – Identification and Administration of Surplus – Compliance with PBA section 70(6)", which was subsequently adopted by the Superintendent (FSCO Policy No. S900-400). This policy directs the actuary on the partial wind-up of a pension plan to identify assets related to a partial wind-up in the same manner as the *Act* would require on a full wind-up. It also affirms that where surplus is identified as a portion of the assets related to the partial wind-up, as contemplated by various referenced provisions of the *Act* and Regulation, it is the administrator's responsibility to administer the surplus as required by the *Act* and Regulation. However, another policy on "Filing Requirements and Priorities" on the wind-up, in whole or in part, of a pension plan says that "if a decision has been made to distribute all surplus on wind-up among members... , the formula for distribution should be included in the wind-up documentation" (FSCO Policy No. W100-101, at para. 1.1). This suggests that a decision to distribute surplus on a wind-up does not have to be made. The same policy also contains the following statement:

> If the plan is in a surplus position on wind-up, the administrator should indicate how the surplus will be dealt with. Generally, distribution of assets must conform with

the proposals set out in the wind-up report approved by the Superintendent. If the wind-up report does not indicate how the surplus will be dealt with, a supplement to the initial report dealing with the surplus assets will be required (at para. 3.1).

We understand this policy as simply intended to impose certain requirements in respect of a distribution of surplus assets when a decision is, in fact, made to effect such a distribution.

In our view, there was a clear and unambiguous practice and policy of the pension regulator of not insisting that the distribution of surplus be provided for, or even dealt with on a current basis, in a partial wind-up report. Other policies on the wind-up process can be reasonably understood to provide direction only when there is an actual proposal to distribute surplus on a partial wind-up, rather than indicating that there must be such a distribution on that occasion.

(b) On Benefit Enhancements

Prior to the date of the Notice of Proposal in this case, the pension regulator had never issued a notice of proposal to refuse to approve a partial wind-up report on the grounds that enhancements paid on partial wind-up were funded from surplus and, therefore, constituted a surplus distribution.

The published PCO policy on the "Allocation of Surplus Distributed to Members and Former Members on Wind-Up", which was subsequently adopted by the Superintendent, states, in its current wording, that "the Superintendent may refuse to approve any allocation of surplus contained in a wind-up report, whether by cash or benefit enhancements, that does not protect the interests of members" pursuant to section 70(5) of the *Act* (FSCO Policy No. S900-900, at para. 3). The policy further states that "where it is in the best interests of the members... , benefit enhancements provided shortly before a wind-up, if funded out of plan surplus, will normally be considered to be part of the surplus distribution proposal" (at para. 6). In the present case, of course, there was no surplus distribution proposal.

Another policy that relates to "Amendments for Benefit Improvements – Notice and Funding" says that the Superintendent may treat an amendment that provides benefit improvements only for specified persons or a class of members as an "adverse amendment" under section 26(1) of the *Act*, in which case notice of the amendment would usually be required to be given to all members (FSCO Policy No. B100-251, paras. 1 & 2). Monsanto, in fact, notified all the active members of the Plan in respect of the amendments introducing the Benefit Enhancements. The policy also addresses the funding of benefit improvements, stating that such improvements can be provided to "specified persons" if they are funded by a contribution from the employer unless such a contribution would not be an "eligible contribution" in the sense of the *Income Tax Act* (Canada), which was the situation in the present case (see Part C1 above).

In short, the practice of the pension regulator with respect to benefit enhancements on a partial wind-up was consistent with the practice on the distribution of surplus in that event. Such enhancements were not treated as justifying a refusal to approve a partial wind-up report because they effected a distribution of surplus or, apparently, because they might otherwise be inconsistent with a distribution of surplus called for on a partial wind-up. None of the published policies of the pension regulator were

inconsistent with this practice. Indeed, the action of the Superintendent in this particular case, in registering the Plan amendments introducing the Benefit Enhancements (see Part C above), conformed to, and did not signal any change in, the practice. Once again, in our view, the relevant practice was clear and unambiguous.

2. The Scope and Application of the Doctrines of Legitimate Expectations and Estoppel

(a) The Doctrine of Legitimate Expectations

The doctrine of legitimate expectations was described by Taylor, J. in the English decision in *R. v. Secretary of State for the Home Department, ex parte Ruddock and others*, [1987] 2 All E.R. 518 (Q.B.D.) in the following terms:

> ... I conclude that the doctrine of legitimate expectation in essence imposes a duty to act fairly. While most of the cases are concerned... with a right to be heard, I do not think the doctrine is so confined. Indeed, in a case where ex hypothesi there is a right to be heard, it may be thought the more important to fair dealing that a promise or undertaking given by a minister as to how he will proceed should be kept. Of course, such a promise or undertaking must not conflict with his statutory duty...I accept the submission of counsel for the Secretary of State that the respondent [the Secretary of State] cannot fetter his discretion. By declaring a policy he does not preclude any possible need to change it. But then if the practice has been to publish the current policy, it would be incumbent on him in dealing fairly to publish the new policy, unless again that would conflict with his duties.

In the earlier case of *Council of Civil Service Union v. Minister for the Civil Service*, [1985] A.C. 374 (H.L.), Lord Fraser said that a "legitimate, or reasonable, expectation may arise from an express promise given on behalf of a public authority or from the existence of a regular practice which the claimant can reasonably expect to continue" (at p. 401). In Ruddock, the court found that there was a legitimate expectation arising from both such sources – an express promise in a published policy and a regular practice – although the conduct of the public authority, the Secretary of State, that was challenged in that case was found to be justified on a reasonable or rational interpretation of the policy and practice that gave rise to the legitimate expectation.

A person who invokes the doctrine of legitimate expectations must have relied to his or her detriment on a clear and unequivocal practice, policy or other promise giving rise to the expectation (see *R. v. Inland Revenue Commissioners Ex Parte Unilever Plc*, (1996), 68 T.C. 205, at p. 231 (C.A.)).

In the present case, the pension regulator had a clear and unequivocal practice and, to some extent, published policies that would reasonably lead Monsanto to believe that its Partial Wind-Up Report would not be disapproved for failure to provide for a distribution of surplus or to take account of the Benefit Enhancements as part of a distribution of surplus. Ray Mowling, the chairman and president of Monsanto, testified that Monsanto would probably have structured the severance programs for the Affected Members differently from a financial perspective if it had known the position that the pension regulator would take on the Partial Wind-Up Report. While he claimed no personal knowledge of the policies and practices of the regulator in respect of partial wind ups and benefit

enhancements in connection with such wind ups, he indicated that Monsanto essentially relied on its pension actuary, Towers Perrin, in that regard. Michael Millns of Towers Perrin, in turn, testified that his firm had used language in respect of surplus distribution in the Partial Wind-Up Report that was similar to that used in other partial wind-up reports filed with the pension regulator, which had never led to a notice of proposal to refuse to approve the partial wind-up report.

Should Monsanto now be required to distribute some portion of the surplus that was in the Plan at the effective date of the Partial Wind-Up, it appears that it would be in no position to unwind the Benefit Enhancements and to reinstate the surplus applied to fund those Enhancements. Monsanto contended that once the amendments introducing the Benefit Enhancements were registered by the pension regulator, the Benefit Enhancements constituted legal obligations that could not be unilaterally withdrawn. This contention was not disputed by any of the other parties.

We conclude that Monsanto relied, directly or indirectly, to its detriment on the relevant practice of the pension regulator in structuring the Partial Wind-Up and in providing the Benefit Enhancements, which reliance was reflected in the Partial Wind-Up Report.

(b) The Doctrine of Estoppel

The decision of the Federal Court Trial Division in *Aurchem Explorations Ltd. v. Canada* (1992), 7 Admin. L. R. (2d) 168, is particularly instructive for present purposes. In that case, a mining recorder had refused to record a mining claim because it was not in accordance with the requirements of the *Yukon Quartz Mining Act* (Canada) (the "Mining *Act*"). However, the recorder had a past practice of recording claims that had the same deficiencies, under the Mining *Act*, as this particular claim. The principals of the prospector whose claim was refused for recording made a judicial review application to the Federal Court to quash that refusal. In fact, the recorder had considerable discretion under section 43(1) of the Mining *Act* to waive the strict requirements of the *Act* in circumstances such as those of this case and to proceed to record a claim. Mr. Justice Strayer of the Federal Court made an order quashing the decision of the recorder to refuse the claim on the basis of the following reasoning:

> ... in these circumstances the [mining recorder] should be stopped from relying on the strict technical requirements of the *Act* when those requirements had been commonly and lawfully waived by the mining recorder in the past in the exercise of his discretion. The conditions for promissory estoppel are well established. First there must be a promise which is clear and unequivocal. I believe that the mining recorder by accepting, in a routine fashion, [claims staked in a particular way] has in effect promised to the prospecting community that if they stake and claim in this way their claims will not be rejected but will be the subject of a favourable exercise of discretion under subs. 43(1). There was reliance on that representation [by the prospector when he staked the rejected claim, on behalf of his principals, in the way he did]. As a result he
>
> and his principals suffered a detriment when the...mining recorder suddenly applied the strict letter of the *Act* without the benefit of the discretion typically exer-

> cised under subs. 43(1)... This is not a matter of using promissory estoppel as a "sword" rather than as a "shield". It is a matter of disallowing the mining recorder from raising objections based on technical requirements of the *Act* when he has through past conduct represented that such requirements would not be invoked, such representations leading prospectors to stake and file claims as they have done in the past. Estoppel could not, of course, preclude the [mining recorder] from enforcing the strict terms of the law simply because they had not been enforced in the past. But here the law leaves a discretion in the mining recorder to waive certain requirements which he has lawfully done on many occasions. This is not to say that the mining recorder was precluded from changing practice and not exercising in the same way the discretionary power provided under subs. 43(1). But, given the wide-spread practice which, according to the evidence, had been going on at least six years, it was incumbent on the mining recorder to make reasonable efforts to bring to the attention of prospectors his intention to require strict and literal compliance with the *Act* and not to waive those requirements in future. If he had done this, then prospectors could be expected to govern themselves accordingly and not to go into the field locating claims in accordance with past practice. [At pp. 176–178.]

The Superintendent in the present case also has a discretion as to whether to approve a partial wind-up report that is not in strict compliance with the *Act*. Section 70(5) of the *Act* provides that:

> The Superintendent may refuse to approve a wind-up report that does not meet the requirements of this *Act* and the regulations or that does not protect the interests of the members and former members of the pension plan (emphasis added).

Therefore, even though a partial wind-up report does not satisfy the requirements of the *Act*, the Superintendent is not obliged to refuse her approval. If the Superintendent were to approve such a report, she would be acting lawfully as well as in accordance with a representation to the pension community evidenced by her past practice and that of the PCO in dealing with partial wind-up reports that had the same deficiencies, in respect of its handling of surplus distribution and benefit enhancements, as were alleged in respect of Monsanto's Partial Wind-Up Report.

(c) Potential Limitations on the Doctrines of Legitimate Expectations and Estoppel

While the doctrines of legitimate expectations and estoppel cannot preclude a public official from exercising a statutory duty (see *Lidder v. Canada (Minister of Employment and Immigration)* (1992), 6 Admin. L.R. (2d) 62, at p. 71 (Fed. C.A.)), that would not be the result of applying either doctrine in this case. The Superintendent is simply given the discretion under the *Act* to refuse to approve a partial wind-up report that fails to comply with the requirements of the *Act*.

In *Aurchem*, the Federal Court declined an invitation to make a second order directing the mining recorder to record the rejected claim, even though the effect of the court's decision was that the recorder "cannot without some warning reverse the practice of the office and insist on strict compliance with certain provisions of the *Act*" (at p. 178). The court said that, in

the final analysis, the decision of whether or not to record the claim was that of the mining recorder within the scope of his discretionary powers. It should be remembered that this case came to the court by way of a judicial review application and not by way of an appeal. This explains the reluctance of the court to order the recording of the claim. Judicial review, unlike a typical appeal process, is not designed to allow a court to substitute its view of the right decision or the right exercise of discretion by the original decision-maker (see D.P. Jones & A. de Villars, *Principles of Administrative Law*, 3d ed. (Toronto: Carswell, 1999), [at p. 684]. This Tribunal, by comparison, has the express power, under section 89(9) of the *Act*, at or after a hearing in respect of a proposal to refuse to approve a partial wind-up report:

> to direct the Superintendent to carry out or refrain from carrying out the proposal and to take such action as the Tribunal considers the Superintendent ought to take in accordance with this *Act* and the regulations, and for such purposes, the Tribunal may substitute its opinion for that of the Superintendent.

Therefore, the Tribunal is entitled to impose its opinion as to the proper exercise of a discretionary power of the Superintendent in association with a direction to the Superintendent to refrain from carrying out a particular proposal.

The Superintendent argued that since the doctrine of legitimate expectations gives rise to procedural rather than substantive rights, it would not permit this Tribunal to find in favour of Monsanto as that would involve a conclusion that the doctrine gives Monsanto a substantive right. In *Reference re Canada Assistance Plan (Canada)* (1991), 1 Admin. L. R. (2d) 1, the Supreme Court of Canada had this to say (at p. 32) about the effect of the doctrine of legitimate expectations:

> If the doctrine of legitimate expectations required consent, and not merely consultation, then it would be the source of substantive rights...
>
> There is no support in Canadian and English cases for the position that the doctrine of legitimate expectations can create substantive rights. It is part of the rules of procedural fairness which can govern administrative bodies. Where it is applicable, it can create a right to make representations or to be consulted. It does not fetter the decision following the representations or consultations.

Monsanto did not suggest, in this case, that its consent would be required to a change in the practice of the pension regulator or that the regulator would be precluded from implementing a change in that practice in respect of future cases, following representations or consultations on the practice. Therefore, it did not need to rely on the doctrine of legitimate expectations as the source of a substantive right. Although the rights arising from the doctrine are procedural, this does not mean that a public authority, such as the Superintendent, could remedy a failure to entertain representations or consult on a change in practice by doing so currently and applying a new policy retroactively to the prejudice of a person, such as Monsanto, who had ordered its affairs in reliance on the old practice. That would afford little respect for the reliance interest of that person and would give little meaning to the procedural right.

While prejudice to the interests of third parties may provide a reason for declining to apply the doctrine of legitimate expectations (see *Libbey Canada Inc. v. Ontario (Minister of Labour)* (1999), 42 O.R. (3d) 417, at p. 435 (Ont. C.A.)), in this case the practice of the pension regulator on which Monsanto relied was well known to others besides Monsanto. The third parties who would, arguably, be prejudiced if the doctrine were to be applied, namely the Affected Employees, cannot reasonably have expected that the pension regulator would do anything in this case but follow that practice and not disapprove the Partial Wind-Up Report. The representation from the pension regulator on which Monsanto relied to its detriment was not made exclusively to it but was made to a broader community, as in *Aurchem* (referred to above). That community was, in effect, the whole pension community, including pension members; consequently, it included the Affected Members. Some of the Affected Members, namely those who were entitled to the Benefit Enhancements, are likely to have benefited from Monsanto's reliance on the established practice of the pension regulator. We heard evidence, which was not disputed, that Monsanto would probably not have introduced the Benefit Enhancements had it known that the Superintendent would change the practice in the way she did in this case.

In conclusion, this is a proper case for applying the doctrine of legitimate expectations or, as it sometimes put, the doctrine of estoppel as it applies against a public authority.

(d) Disposition

In light of our conclusions, we would order the Superintendent to refrain from carrying out the proposal contained in the Notice of Proposal and to approve the Partial Wind-Up Report. We make no order as to the costs of this proceeding but the panel will entertain written representations on that matter from any of the parties who wish to make them.

DATED at Toronto, this 14th day of April, 2000.

Colin H. H. McNairn,
Vice Chair of the Tribunal and Chair of the Panel
C.S. (Kit) Moore,
Member of the Tribunal and of the Panel

Minority Reasons

The facts in this proceeding are adequately summarized in the Majority Reasons and I adopt that summary for the purposes of these Reasons.

The Surplus Distribution Issue

The key issue to be decided in this proceeding is whether it is necessary to distribute pension surplus on a partial wind-up in order to meet the requirements of section 70(6) of the *Pension Benefits Act* (Ontario) (the "*Act*").

Section 70(6) of the *Act* says:

> On the partial wind-up of a pension plan, members, former members and other persons entitled to benefits under the pension plan shall have rights and benefits that are not less than the rights and benefits they would have on a full wind-up of the pension plan on the effective date of the partial wind-up.

Can those persons affected by a partial windup "have rights and benefits that are not less than the rights and benefits they would have on a full wind-up" without a distribution of surplus at the time of the partial wind-up?

In order to answer this question, it is necessary to look at the rights and benefits provided on a full wind-up. The *Act* confers special rights and benefits (not available on an individual termination) to plan members on a full wind-up, including immediate vesting, portability options and "grow-in" rights. A wind-up also "crystallizes" surplus rights, as clarified by the Supreme Court of Canada in *Schmidt v. Air Products of Canada Ltd.*, [1994] 2 S.C.R. 211.

The *Act* creates the concept of a partial wind up to extend these rights and protections to those affected by certain events involving the termination of the active membership of a significant group of a plan's members. There are at least two reasons for this legislative concept. First, it is presumed that members of a partial wind-up group are in a similar vulnerable position to those in a full wind-up, and deserve the same protections. Second, a partial wind-up prevents an employer from maintaining the ongoing status of a plan simply to avoid the extra obligations that would result from a full wind-up, including the requirement to provide the special wind-up rights noted above, and possibly having to deal with surplus.

It is clear, when a plan is fully wound up, that the issue of surplus ownership and distribution must be dealt with. Section 8(1) of Regulation 909 (the "Regulation") lays out two acceptable methods of dealing with surplus on full or partial wind-up. The surplus can be distributed to, or for the benefit of, members, former members and others with entitlements (excluding the employer). The Pension Commission of Ontario (the "PCO") and the Superintendent have taken the position, in Policy S900-900, that, in this case, surplus must be distributed to each of the three groups, in a way which protects the interests of each of these groups.

Alternatively, there can be an agreement between the employer, the members' collective bargaining agent (or two-thirds of the active plan members) and former members and others with entitlements, to share and distribute surplus in some other way.

Section 70(6) contains a very broad statement extending all of the rights and benefits of a full wind-up to members affected by a partial wind-up. It says that, in effect, members affected by a partial wind-up are to be dealt with as if there had been a full wind-up at the partial wind-up date. Conceptually, this requires the division of the pension fund into two parts – assets and liabilities relating to the partial wind-up group,

and assets and liabilities relating to the ongoing group. The assets and liabilities relating to the partial wind-up group must then be dealt with as if it were a plan undergoing a full wind-up.

The assets which exceed the liabilities for the partial wind-up group constitute a surplus to which the partial wind-up group potentially have rights. The employer cannot unilaterally use that surplus to take contribution holidays or make benefit improvements, other than on the basis set out on section 8(1) of the Regulation.

There is no reason to exclude surplus rights from the rights referred to in section 70(6) of the *Act*. There is no other way in which those rights can be extended to the partial wind-up group without a resolution of the rights to surplus at the time of partial wind-up.

Monsanto proposes to maintain the rights to surplus of members affected by the partial wind-up, by allowing them to share in a future surplus distribution, if a surplus exists at the time of a future full wind-up of the plan. While such a result could conceivably be agreed to by members of the partial wind-up group following the procedures of section 8(1) of the Regulation, Monsanto cannot unilaterally dispose of the surplus rights of the partial wind-up group in this manner, and proceed to use the surplus attributable to this group arbitrarily for benefit enhancements related to a subset of the partial wind-up group.

Monsanto's proposal does not offer to members of the partial wind-up group protection of their surplus rights. A possible share of a surplus that may arise many years in the future is not the equivalent of an immediate resolution of surplus issues, and a distribution of surplus at the time of the partial wind-up.

Furthermore, postponing the issue of surplus ownership and distribution to a future full wind-up creates serious practical and legal difficulties.

On a practical level, a full wind-up of the pension plan may not happen for decades, and, as time passes, it will become increasingly difficult to locate the members of the partial wind-up group (or the beneficiaries of those who have died), many of whom would have long since severed all connections with the employer and the pension plan.

There may also be more than one partial wind-up over the course of the plan's history, and it is not at all clear how the rights to a future surplus can be equitably shared among members of different partial wind-up groups and plan members at the final wind-up. For example, if a plan has two partial wind ups prior to a full wind-up, with a surplus at one of the partial wind ups and at the full wind-up, how is surplus at the full wind-up to be shared among the members at the full wind-up and the two partial wind-up groups? Would those members affected by a partial wind-up without a surplus have any rights with respect to the surplus at full wind-up?

An even more difficult problem is the lack of a clear legal basis for this proposal. Section 8(1) of the Regulation says:

> No payment may be made from surplus out of a pension plan that is being wound up in whole or in part unless,
>
> (a) the payment is to be made to or for the benefit of members, former members and other persons, other than an employer, who are entitled to payments under the pension plan on the date of wind-up; or

(b) the payment is made to an employer with the written agreement of

(i) the employer

(ii) the collective bargaining agent of the members of the plan or, if there is no collective bargaining agent, at least two-thirds of the members of the plan, and

(iii) such number of former members and other persons who are entitled to payments under the pension plan on the date of the wind-up as the Superintendent considers appropriate in the circumstances.

At a future full wind-up of the plan, members of the partial wind-up group who exercise their transfer options under section 42 of the *Act* are no longer members, former members, or those entitled to payments. The disposition of surplus on full wind-up would be in the hands of the future employer, active members and others with entitlements at full wind-up. There is no clear basis in the *Act* for members of the partial wind-up group to pursue their rights to surplus at a future full wind-up of the plan. How can Monsanto commit to guarantee to this group potential rights to future surplus, if its own rights are not established, and could not be until a future full wind-up?

Monsanto contends that the Superintendent's proposal is unfair to ongoing members of the pension plan. In general, there is no reason to see the removal of a proportional share of assets and liabilities related to the partial wind-up group, which leaves in the plan for the ongoing group a proportional share of the assets, including surplus, as disadvantageous to the members of the ongoing group.

In this particular case, it is difficult to understand how the removal of $3.1 million in surplus from the pension, satisfying all future claims from the partial wind-up group, is less advantageous to ongoing plan members than the Monsanto proposal, which would remove $4.8 million from the pension surplus for pension enhancements to some of the partial wind-up group, and still maintain some future rights to surplus for the partial wind-up group as a potential future liability in the ongoing plan.

Monsanto and the Association of Canadian Pension Management presented arguments about the negative consequences for the future of the pension system if the Superintendent's position were upheld. It is an unfortunate consequence of legislative and regulatory requirements in the pension field that, in providing protections and more equitable treatment for plan members, they may make plans less attractive to employers. While this is obviously a matter of general concern for legislators, the role of the Tribunal is to interpret the legislation as it is written, having regard for the goals of the legislation. Requiring that surplus rights be dealt with on partial wind-up, though it may make defined benefit pension plans less attractive to employers, is clearly compatible with a central goal of the *Act*, namely the protection of the interests of plan members.

As for the argument that requiring surplus distribution on partial wind-up would be detrimental to future pension plan funding, it was not demonstrated that this would lead to a significant future underfunding of pension plans, negatively affecting the security of pension benefits in the future, given the constraints of actuarial and legislative standards.

The Benefit Enhancements Issue

Section 70(5) of the *Act* gives the Superintendent authority to refuse to approve a wind-up report which "does not protect the members and former members of the pension plan". FSCO Policy S900-900, dated February 24, 1994, says, in part,

> Where it is in the best interests of the members and former members, benefit enhancements provided shortly before a wind-up, if funded out of plan surplus, will normally be considered to be part of the surplus distribution proposal.

This policy prevents an employer from arbitrarily using all of the pension surplus to meet some or all of its severance or other obligations to its terminating employees – in effect, spending the surplus for its own purposes, without having established ownership rights with respect to that surplus.

In the absence of an approved surplus sharing agreement, as provided for under section 8(1) of the Regulation, the Superintendent has the authority, under section 70(5) of the *Act*, to refuse to approve a wind-up report that proposes a disproportionate or inequitable distribution of surplus on the basis that it does not protect the interests of the members and former members of the plan.

In this case, Monsanto proposed to use the entire surplus related to the partial wind-up group (as well as some of the surplus related to the ongoing plan) to fund benefit enhancements to only 45 of the 146 members of the partial wind-up group. The Superintendent is justified in viewing this as a disproportionate and inequitable distribution of surplus and contrary to section 70(5) of the *Act*.

Monsanto argued that the members of the partial wind-up group were not disadvantaged as their total package of severance and pension benefits was in excess of the sum of minimum statutory severance requirements and their proportional share of surplus. While there is no doubt that the Superintendent's proposal would require a restructuring of Monsanto's severance and retirement packages, it is not clear what the final outcome would have been for all affected members if a surplus distribution arrangement had been agreed to as provided for under section 8(1) of the Regulation, and statutory and common law severance requirements were met. In any case, it is not the role of this Tribunal to assess the overall fairness of potential alternative severance packages, but rather to deal with the pension plan and the requirements of the *Act*.

If the rights with respect to surplus of the partial wind-up group are to be protected, the requirement that benefit enhancements at full wind-up are to be fair and equitable must be extended to a partial wind-up situation. Monsanto must either distribute the surplus related to the partial wind-up group equitably among that group or reach an agreement for surplus distribution in accordance with section 8(1) of the Regulation.

The Notice Issue

Section 28(2)(q) of the Regulation requires that each member, former member and others with entitlements be provided with the following:

> if there are surplus assets, a statement of the method of distribution and, if applicable, the formula for allocation of surplus among the plan beneficiaries;

Monsanto did not provide such notice to members of the partial wind-up group, arguing that, as there was no actual surplus at the partial

wind-up, such notice was not required. In my view, as surplus rights exist, and must be dealt with, at the time of partial wind-up, Monsanto failed to meet this notice requirement.

The Transfer of Pensions Issue

The Superintendent argued that all benefits from the partial wind-up group must be transferred out of the plan, either for the purchase of an annuity or one of the options (as required by section 42 of the *Act*) for transfer of commuted value, relying on the references to "distribution" of assets at various places in the *Act*. This interpretation has the virtue of consistency: the assets, including surplus, attributable to the partial wind-up group, and the plan's obligations to that group, would be totally removed from the plan. This interpretation would lead to a duplication of the requirements on a full wind-up.

Monsanto argued that reading such a requirement into the *Act* would disadvantage both the plan and the members. The plan would be required to purchase annuities at a higher cost on the market than provided for in the plan valuation, and members would lose the option of keeping their benefits in the plan, either for the sake of convenience or the possibility of future benefit enhancements. Apparently, in light of the options presented to them, two-thirds of the Monsanto partial wind-up group have elected to keep their benefits in the plan.

I see no reason for a strict interpretation of the meaning of the word "distribution" in this instance. There is no need for a partial wind-up to duplicate in every detail a full wind-up, where there is no disadvantage to the affected members. "Distribution" on partial wind-up need only require that assets, including surplus, related to the partial wind-up group, must be segregated from the assets related to the ongoing plan group. Individual terminating members within the partial wind-up group would retain their section 42 transfer rights, but the option of transferring accrued deferred benefits to the ongoing plan need not be precluded.

While it may turn out in many partial wind ups that all assets would indeed be removed from the plan, I see no reason to limit these options for a partial wind-up, if the rights of the affected plan members are not impaired.

The Legitimate Expectations Issue

Monsanto argued that the failure of the Superintendent and the predecessor PCO to clearly inform employers of the requirement for surplus distribution on partial wind-up created the legitimate expectation that their partial wind-up proposals would be accepted by the Superintendent even though they made no provision for such a distribution. A failure to accept Monsanto's proposal would therefore cause Monsanto financial harm, as it had made commitments with respect to pension enhancements and severance which could not be withdrawn, and could now be required to make further payments out of plan surplus to members of the partial wind-up group. Monsanto also argued that it would be unable to fund the promised pension enhancements without using the surplus as it had proposed since the plan has "excess surplus", which precluded Monsanto from making any additional payment into the plan that would qualify as an "eligible contribution" in the sense of the *Income Tax Act (Canada)*.

The policies of the Superintendent and the predecessor PCO have been ambiguous at best, and it had not been the practice, prior to this case, to refuse to approve a partial wind-up report on the basis that surplus issues had not been dealt with. In such circumstances, a notification to the pension community of the intent to change (or clarify) policy and practice on these matters would certainly be the preferred course of action.

While an earlier and clearer statement of the Superintendent's reading of the legislative requirements and intentions with respect to the treatment of surplus on partial wind-up would certainly have been desirable, and Monsanto may be facing higher costs than it had earlier expected, accepting Monsanto's proposal would deny members of the partial wind-up group rights conferred on them by the *Act*. The *Act* gives members of the partial wind-up group rights with respect to surplus, and these rights cannot be dispensed with to compensate Monsanto for the lack of clarity in the past pronouncements of the Superintendent and the PCO or inconsistencies in their past practices.

Section 70(5) of the *Act* says:

> The Superintendent **may** refuse to approve a wind-up report that does not meet the requirements of the *Act* and the regulations or that does not protect the interests of the members and former members of the pension plan.(emphasis added)

While there would seem to be leeway for the Superintendent to approve a report which fails in a minor or technical way, the Superintendent has a clear duty to protect the interests of plan members and former members. The disposition of surplus, in this case, involves more than a minor or technical breach. It could have a significant financial impact on affected members. Approving the Monsanto wind-up report and waiving their right to an immediate disposition of the surplus issue would stretch beyond reasonable bounds the discretion of the Superintendent.

Section 79(3)(b) of the *Act* prevents the Superintendent from consenting to payment of surplus to an employer unless "the pension plan provides for payment of surplus to the employer on the wind-up of the pension plan". As Monsanto's rights with respect to the surplus relating to the partial wind-up group have not

been established, the Superintendent cannot approve a distribution of surplus to Monsanto.

I would therefore uphold the Superintendent's refusal to accept Monsanto's partial wind up report.

DATED at Toronto, this 14th day of April, 2000.

Louis Erlichman
Member of the Tribunal and the Panel

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